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59TH CONGRESS, 1st Session. | SENATE. | DOCUMENT No. 243.

REGULATION OF RAILWAY RATES.

HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE COMMERCE,

UNITED STATES SENATE,

IN SPECIAL SESSION,

PURSUANT TO SENATE RESOLUTION No. 288,

FIFTY-EIGHTH CONGRESS, THIRD SESSION.

MAY 8, 1905—MAY 17, 1905.

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1906.

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SENATE OF THE UNITED STATES.

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NELSON W. ALDRICH, of Rhode Island.
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COLIN H. LIVINGSTONE,
Clerk to Committee.

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REGULATION OF RAILWAY RATES.

MONDAY, *May 8, 1905.*

The committee met pursuant to adjournment.

Present: The chairman and Senators Cullom, Kean, Dolliver, Clapp, and Newlands.

The following letter was, by request of Senator Carmack, ordered to be placed in the record at this point:

PHILLIPS, WEBB & CO., WHOLESALE GROCERS,
Nashville, Tenn., May 3, 1905.

Hon. E. W. CARMACK, *Washington, D. C.*

DEAR SIR: I have your telegram asking if I desired to file statement or testify concerning freight rates before committee. Will say I shall be very glad to do so if I thought any information in my possession would be of any service.

I am strongly in favor of power of Commission being enlarged, and where the railroads have established freight rates that are unjust and unreasonable that the Commission should certainly have power of naming and enforcing reasonable rate.

The evil of rebating is not very common in this territory now, at present it being confined to a few of the large corporations, who no doubt secure this rebate on account of large tonnage. These rebates are of such a secret character that it is impossible to secure definite information regarding them.

Some of the rates to Nashville I deem as unfair and unjust. To illustrate, would say that our rate from California and Pacific coast on canned goods, car lots, is 89 cents, while rate on same class of goods to Memphis, Tenn., St. Louis, New Orleans, Boston, New York, Philadelphia, Baltimore, Washington, Pittsburg, Indianapolis, and Lexington, Ky., is 75 cents per hundredweight.

Most of the freight for Louisville from the coast comes first to New Orleans, thence over the Louisville and Nashville road through Nashville to Louisville, the railway company charging Louisville merchants 14 cents per hundredweight less than Nashville. We contend our rate is unfair and unjust as compared to the Louisville rate, also compared to the rate of Lexington, Ky., and other far eastern points.

Louisville and Nashville Railroad formerly had a rate on sugar and kindred products from New Orleans to Louisville 6 cents less than Nashville—in other words, charged 6 cents less for the longer haul. We made complaint of this fact to the Interstate Commerce Commission, and they issued an order requiring them to make no higher rate to Nashville than Louisville, and we understand now the rate is identical to Nashville and Louisville.

Our rates, also, on canned goods from Ohio, Indiana, and Illinois points are unjust when compared to rates to other points in that section. As an example, our rate from Hoopeston, Ill., on canned goods is 27 cents to Nashville. Rate on canned goods from same point to Memphis, which is several hundred miles farther, is 19 cents. Rate from Greenwood, Ind., to Nashville, 25 cents,

and from same point to New Orleans 21 cents, Mobile, 20 cents, and Memphis, 19 cents.

We have repeatedly made complaint to the railway company about this unjust and unequal rate, but can not get any relief.

I simply give you statement of such irregularities as I can call to mind, and if you think the information I can give would be of any service I shall be very glad to hold myself at your command.

Very respectfully, W. K. PHILLIPS.

Mr. Oliver S. Garrison being about to take the stand to make his statement—

Mr. E. P. BACON. Allow me a word, Mr. Chairman. I had a special appointment with you for this morning, for which I have been waiting four days.

The CHAIRMAN. I was looking for you, Mr. Bacon, but did not see you in the room.

Mr. BACON. I have been here ever since last Tuesday evening.

The CHAIRMAN. Well, go on now. We shall lose time in talking about it. State your name, occupation, and place of residence.

Mr. BACON. I should like to offer a word of explanation to Mr. Garrison, and that is that having been here four days and having yielded to one after another, it seems to me now that the time has come when it is absolutely essential to claim my right.

The CHAIRMAN. I do not see any necessity of making that explanation. I did not see you or I would have called you first.

Mr. BACON. I thought I ought to say that in courtesy to Mr. Garrison. I wish to say also that the railroad side having been heard during the past three weeks, the entire time these hearings have been in progress, the representatives of the commercial organizations made application for a hearing, and several of those applications have been accepted and appointments made.

The CHAIRMAN. Mr. Bacon, you say that as the railroads have been given a full hearing you think it is only fair that you should be heard. That might be misunderstood throughout the country or in the Senate, and I wish to state that at the last session of the Senate this committee gave three months to the hearing of what may be said to be your side of this question; and I believe we heard you twice or three times, did we not?

Mr. BACON. I think I was twice before the committee.

The CHAIRMAN. You were before the committee on two occasions. The committee did not hear the other side, or, if you please, the railroad side, except in two cases—only one, to be exact. Mr. Davenport appeared for the insurance companies and investment companies of New York, and Mr. Stuyvesant Fish was the only distinctly railroad man that appeared before the committee.

Senator KEAN. Mr. Smith and Mr. Stone, also.

The CHAIRMAN. Oh, yes; Mr. Milton Smith and Mr. Stone.

I did not want it to appear that we were denying to your side the right to be heard. Having heard your side for about three months, we thought it was fair to let the railroads have a chance now. I wrote you, Mr. Bacon, to be present, I believe——

Mr. BACON. I did not intend in any way to reflect upon the committee, Senator.

The CHAIRMAN. Let me finish. I wrote you that I would give you

a hearing, and of course I had to give the other side notice, and a great many are here present to be heard. I wanted you to have an opportunity to appear if you so desired, and I told you that you could appear to-day. So I do not want it to appear, and I do not think it is in your mind, that there is even an appearance of unfairness on the part of the committee toward the——

Mr. BACON. I have no such idea, and I am very sorry if anything I have said has implied any such thought.

The CHAIRMAN. It would look that way from your remarks, I thought.

Mr. BACON. Let me say, Mr. Chairman, that the measure of time in relation to the hearings held during the last session of Congress is somewhat misleading, because the committee held only two, or at the most three, sessions a week, and mostly only of an hour or an hour and a half duration.

The CHAIRMAN. Two hours sometimes.

Mr. BACON. So that I think the number of hearings that the committee held as compared with those that have been held during the past three weeks is much less than those held during this period.

Senator KEAN. In view of what you have said on this point, let me call your attention to what you said at a former hearing on this subject, on December 16:

What I desire particularly to emphasize is that our side desires no further hearings. We feel that the subject has been exhausted.

Mr. BACON. I made that statement for the reason that it was hoped that legislation might be enacted at that session; and our people preferred, rather than to occasion a delay, to waive any further hearings. Now, however, that the committee has assembled for the express purpose of going into the subject thoroughly from top to bottom, we feel that we want to present what we were then willing to waive, but what, in view of the arguments and statements that have been made by the railway side, it now seems necessary for us to present.

Senator KEAN. Then you do not think the subject has been exhausted?

Mr. BACON. It perhaps has been pretty well gone over; but, nevertheless, in view, as I say, of what has been brought out during the last three weeks, it seems to be necessary that the side of the public should be presented to the committee more fully and completely than it has been.

Senator KEAN. The side of what?

Mr. BACON. The side of the public.

Senator KEAN. Or of the grain shippers?

Senator DOLLIVER. There is no desire on the part of the committee to deny a hearing to anybody or to abridge any reasonable hearing. I think all parties will have a chance to be heard before we are through with the question.

STATEMENT OF MR. EDWARD P. BACON.

Mr. BACON. I will now proceed in the usual way. My name is Edward P. Bacon; residence, Milwaukee. I appear before the committee as the representative of the commercial interests of the country that were represented in a convention held in St. Louis in October last, consisting of delegates from various commercial organizations in all parts of the country. I will add that I am myself engaged in the grain commission business at Milwaukee, where I have been engaged for the past forty years.

In connection with that St. Louis convention, to which I have referred, I will say that there are now upward of 500 commercial organizations that are associated under the regulations of that convention; that is, many of them sent delegates to that convention, and others of them have indorsed the proceedings of the convention and have allied themselves with those who were in attendance at the convention, for the purpose of securing this legislation.

One of the Senators asked a few days ago what had started the excitement in favor of this legislation, and I make this statement incidentally in connection with that, and will say that the movement started four years previously in the calling of a convention, which was also held at St. Louis, in October, 1900; and that ever since that time the commercial organizations of the country have been taking action to promote this legislation by means of communicating with their representatives in Congress and by petitions to Congress for the purpose, which have been participated in by all of these organizations to which I refer, over 500 in number.

Senator CULLOM. I think that question was asked in connection with a statement that was made that rebates were a thing of the past and that discriminations were a thing of the past; whereupon the question naturally occurred, as to those two important things, which have always been the basis of discriminations, if they had passed and gone and were not practiced any more why should excitement now continue?

Mr. BACON. The suppression of rebates is only one of the evils that have been aimed at by the commercial organizations. That evil has been considered by the associations as having been effectually remedied by the passage of the Elkins Act in 1903. But the convention of 1904 was called particularly for the purpose, and so expressed in the call, of promoting legislation that would give greater effectiveness to the Interstate Commerce Commission.

Senator CULLOM. In what way?

Mr. BACON. In the way of regulating tariff rates that were discriminative either between localities or between different descriptions of traffic or that were unreasonable in themselves.

Senator CULLOM. Do you say that discriminations are a thing of the past?

Mr. BACON. Personal discriminations, I think, are a thing of the past. They are the only class of discriminations that are reached by the Elkins Act. The Elkins Act simply prohibits any departure from the published tariff rates or any concession in any form from those rates. There is good reason to believe that, to a large extent at least, discriminations of that character have been abolished; but, as I stated to the committee during the last session of Congress,

when I had the honor of appearing before you, that is only one of five different classes of discriminations, and no other class is reached by the Elkins Act, and no other class can be reached except by conferring upon the Commission this specific power of determining what change shall be made in the tariff rate that is found to be wrong. That is what other discriminations arise from—injustice in the published tariff rates.

I may say in this connection that it has been found that since discriminations by rebates have been so effectually prevented by the Elkins law the railways have resorted to ingenious devices in published tariff rates for the evident purpose of evading that act.

Senator DOLLIVER. If it will not interrupt you too much, Mr. Bacon, the Elkins law seems to provide the same remedy for the discriminations which are permitted by the original interstate-commerce act that it does for these rebates—that is, for secret departures from the published rate. I do not exactly understand why you say that the Elkins Act has been effective to prevent rebates and is not applicable to the other discriminations forbidden by the interstate-commerce law.

Mr. BACON. The Elkins Act, as I said before, relates entirely to departures from the published tariff rates.

Senator DOLLIVER. No; it says:

SEC. 3. That whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier is engaged in the carriage of passengers or freight traffic between given points at less than the published rates on file——

The CHAIRMAN. The Supreme Court, when it passed upon this act, said it applied to all forms of discriminations. That would include localities as well as persons. I say this in order to give you an opportunity to set yourself right. We have that decision of the Supreme Court printed in our hearings.

Mr. BACON. I will say, right there, that before action can be taken under the Elkins Act, in the way of injunction or for discrimination practiced under the tariff rates, it is necessary to prove that those tariff rates are discriminative, and you can obtain no relief until that is proven. It would be incompetent for the court, as it seems to me, to go into the question of fact in that matter, for the reason that by so doing it would be pursuing a course which would lead to the fixing of rates, and that the Supreme Court has declared no court is competent to do; that is, if the court enters upon the question of discrimination in published tariff rates it proceeds on a line which will lead to changing the tariff rates; in other words, to the fixing of a rate to be enforced in place of one already in force under the published tariff. I hold, in consequence of that fact, that it is certainly impracticable to reach these discriminations in tariff rates under the Elkins Act. If Senator Dolliver will take the trouble to read a little further along in that same section he will find that the court is required simply to prevent any departure from the published tariff rates. That is in the same section.

Senator DOLLIVER. I think, Mr. Bacon, the Supreme Court in a very recent case, between the city of Omaha, in Nebraska, and the city of Wichita, in Kansas, dealt with the question of a given rate, and pointed out that the court had full power—the Elkins Act in the

meantime having passed—to hear fully and determine the merits of that controversy.

Mr BACON. If I may be permitted, I will read the entire section from which Senator Dolliver quoted:

SEC. 3. That whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier is engaged in the carriage of passengers or freight traffic between given points at less than the published rates on file, or is committing any discriminations forbidden by law, a petition may be presented alleging such facts to the circuit court of the United States sitting in equity having jurisdiction, and when the act complained of is alleged to have been committed or as being committed in part in more than one judicial district or State, it may be dealt with, inquired of, tried, and determined in either such judicial district or State, whereupon it shall be the duty of the court summarily to inquire into the circumstances, upon such notice and in such manner as the court shall direct and without the formal pleadings and proceedings applicable to ordinary suits in equity, and to make such other persons or corporations parties thereto as the court may deem necessary—

Here is the point—

and upon being satisfied of the truth of the allegations of said petition said court shall enforce an observance of the published tariffs or direct and require a discontinuance of such discrimination by proper orders, writs, and process, which said orders, writs, and process may be enforceable as well against the parties interested in the traffic as against the carrier, subject to the right of appeal as now provided by law.

The CHAIRMAN. There is nothing in that to prevent the passing upon discriminations between St. Louis and Chicago or between Cincinnati and Chicago. A published tariff applies to Cincinnati and Chicago, and if the shippers find that there is discrimination they have a right to bring an action in court.

Mr. BACON. My point is that in investigating that question the court trenches upon a power which the Supreme Court has declared it does not possess; that in questioning the correctness of the published tariff rates or in determining whether those published tariffs discriminate between localities or between different commodities it enters upon the investigation of the question of fixing rates—of changing rates—and any order which it made in pursuance of such investigation would be that the rate should be changed. The Supreme Court has declared emphatically in several cases that a court can not fix the rates in any way, and for that reason the commercial organizations have proceeded to endeavor to secure the power to be vested in the Interstate Commerce Commission to determine whether discrimination exists in the published tariff rates or not, and if it is found that discrimination does exist in those rates the Commission shall have power to make such change in them as to prevent that discrimination. That applies not only to the matter of discrimination between localities and between commodities, but also with reference to export and import rates, in which there is an immense amount of discrimination, and also to the difference between rates charged for carload lots and less than carload lots as well as discrimination that relates to short distances as compared with longer distances. All these various forms of discrimination are under published tariff rates and can only be reached, remedied, and corrected by means of correcting those published tariff rates, and the courts have not the power to correct the published tariff rates. That is the reason why the commercial organizations have proceeded in this effort to secure this legislation.

Senator DOLLIVER. Have you understood that the courts are without power to declare a published rate unjust and unreasonable?

Mr. BACON. In an action between two private parties there is no question that it may declare the rate unreasonable, and it may declare to what extent it is unreasonable, and may assess damages in favor of the party injured; but it can not enter into the investigation of the question on behalf of the public with reference to tariff rates. It can only go into the question as between two private individuals, who are shippers, or between a private individual shipper and a railway corporation, if the shipper believes himself to have been injured; and the court may award damages in that case. But that, as you will perceive, is but an infinitesimal remedy, whereas the difficulty encountered covers the whole country, or at least a large section of the country in each case, and every citizen wants relief from it, wants a remedy for it, and that remedy can only be provided through a tribunal established for the purpose by Congress.

Senator DOLLIVER. Have you any doubt of the power of the courts, when a question of discrimination is presented to them, to make a decree requiring the discrimination to cease?

Mr. BACON. It could make such a decree if it did not involve a change of the rate.

Senator DOLLIVER. A general order or a decree requiring that a discrimination which is a violation of the law should cease?

Mr. BACON. I will say, in this connection, that a gentleman appeared here Saturday, representing lumber dealers in the South, and stated a case that has been brought in the State of Georgia, I believe, where there was an advance in the rate on lumber of 2 cents per hundred pounds from his territory to the Ohio River. He stated distinctly and positively that the court declined to entertain the case because the decision of it, if in favor of the petitioner, would involve the changing of a rate, which the court had no authority to make. And, by the way, I have the decision of the court here with me to present to the committee at his request.

Senator CULLOM. Was not that action brought before the Elkins Act was passed?

Mr. BACON. No, sir; it was subsequent to the Elkins law; it was last year.

Senator CULLOM. I think the suit must have been brought before that.

Mr. BACON. This decision covers four or five pages, but I will leave it with the committee, and request that it be made a part of the record.

Senator KEAN. What is it?

Mr. BACON. It is the opinion of the court.

Senator KEAN. Who was the judge? What court?

Mr. BACON. The case was C. W. Robinson Lumber Company et al. *v.* Illinois Central Railroad Company et al.; opinion by Judge Niles, filed July 1, 1903. The Elkins Act was passed February 19, 1903.

Senator KEAN. When was that procedure begun—before or after the passage of the Elkins law?

Mr. BACON. After the passage of the Elkins law.

Senator KEAN. Was it begun under the Elkins law, or under the original act?

Mr. BACON. I do not think the proceedings were begun under any specific law; the petition set forth that the railroads had promul-

gated tariffs which had advanced rates on lumber 2 cents per hundred from points in that territory to points on the Ohio River and north thereof, and asked the court to restrain the enforcement of those tariffs. The court declined to entertain the case on the ground that if it should do so and should find that the rates were unreasonable, the effect of its order would be the establishment of the rate previously existing, which it had no power to do.

The CHAIRMAN. On that very point I want to read you from the Elkins Act and call your attention to its language. Your contention is that the Elkins law applied to departure from published rates exclusively?

Mr. BACON. That is my contention.

The CHAIRMAN. If you will read the first section of the Elkins Act, to which I want to attract your attention, you will find this language:

And it shall be unlawful for any person, persons, or corporation to offer, grant, or give or to solicit, accept, or receive any rebate, concession, or discrimination in respect of the transportation of any property in interstate or foreign commerce by any common carrier subject to said act to regulate commerce and the acts amendatory thereto whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said act to regulate commerce and the acts amendatory thereto, or whereby any other advantage is given or discrimination is practiced.

The departure from the published tariff is provided for, just as you say, but the law says:

Or whereby any other advantage is given or discrimination is practiced.

If they be between communities or between individuals. That is as broad as language can make it. I draw your attention to this matter so that you can either correct your statement or answer. Here is section 3:

That whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier is engaged in the carriage of passengers or freight traffic between given points at less than the published rates on file—

That is your contention, and here is the other phase—

or is committing any discriminations forbidden by law, a petition may be presented alleging such facts to the circuit court of the United States sitting in equity having jurisdiction.

That may be by petition under the old Cullom law or under any other act. It provides for departures from the published rates, and I call your attention also to these words: "Or is committing any discrimination forbidden by law." I only interrupt you to get the record right, and to get your statement right.

Mr. BACON. I appreciate that point fully, Mr. Chairman. But the difficulty lies in the fact that the circuit court is limited in its action by the decision of the Supreme Court that it may not do anything which will effect a change of rates or which will effect the establishment of a rate.

Senator DOLLIVER. This is the most important thing we have to consider, Mr. Bacon. I think, if you will not regard it as an interruption, I might call your attention to the decision of the Supreme Court of the United States in the case of The Missouri Pacific Railway *v.* United States (189 U. S.), where that exact question was taken up. Here was a case where a violation of the act to regulate commerce was asserted in the way of discrimination between locali-

ties, by a common carrier subject to the act, covering unjust preference or advantage of one locality over another. The suit was brought prior to the enactment of the Elkins Act. The court said:

Testing this question by the law which was in force at the time when the suit was begun and when it was decided below, we are of the opinion that the authority to bring the suit did not exist.

But it adds:

But this is not the case under the law as it now exists, since power to prosecute a suit like the one under consideration is expressly conferred by an act of Congress adopted since the case was argued at bar—that is, the act "to further regulate commerce with foreign nations and among the States, approved February 19, 1903."

Then the court in its decision says:

In the nature of things, it can not be ascertained from the record whether the railroad company now exacts the rates complained of as being discriminatory, and which it was the purpose of the suit to correct; but, if it does, of course the power to question the legality of such rates by a suit in equity, brought like the one now here, clearly exists.

I call your attention to that opinion, because it will have the effect to exclude from our controversy the consideration of a good many things that have troubled all of us, namely, these discriminations between places.

Mr. BACON. The court does not seem to have gone quite so far as in the Georgia case—that is, it does not seem to have pursued the effect of the act as did the judge in the Georgia case to which I have referred. In that case the judge proceeded so far as to reach the effect which would be produced by his passing upon the subject, which would be to fix the rate by the court, and in view of the resultant effect of the court acting upon that question it declined to entertain it and threw it out, and the court gives its reasons in this opinion, which I will read if the committee desire.

Senator DOLLIVER. No; I would rather have you put it in the record.

Mr. BACON. Would it not be well to bring the points before the committee in this connection?

Mr. DOLLIVER. You will have liberty to put it into the record in full.

The CHAIRMAN. Let it come in right at this point.

Mr. BACON. It is so clear in its statement on that point that I thought the committee might want to hear some of the language.

Senator KEAN. One is the opinion of the Supreme Court, and the other is the opinion of a circuit court?

Mr. BACON. No; the circuit court opinion proceeds in pursuance of the opinion previously rendered by the Supreme Court, which absolutely precluded it from taking the question into consideration.

Now, perhaps, we have gone far enough into that question.

Following is the opinion of the circuit court referred to by Mr. Bacon:

[C. W. Robinson Lumber Company et al. v. Illinois Central Railroad Company et al. No. 701.]

Opinion of court refusing restraining order.

The complainants filed their original bill on the 1st day of May, 1903. The averments of the bill were, in substance, that an increase of 2 cents per hundred pounds in the rates on lumber from the yellow-pine district of Mississippi to

points on the Ohio River and beyond was unjust, unreasonable, and unlawful. It also averred that the increase was unjust, unreasonable, and illegal for the reason that it amounted to a discrimination against the Mississippi yellow-pine district in favor of points in Arkansas and Louisiana west of the Mississippi River on yellow-pine lumber and other woods in the same territory.

Complaint was also made that the carriers impose upon the shippers of lumber the burden of equipping cars at their expense, and at the same time charge for the increased weight caused by this equipment. It alleged that the defendant railroad company and others were members of the Southeast Mississippi Valley Association, which was an illegal combination in restraint of interstate trade, and that the advance in rates was effected through the agency of this association.

It was also alleged that complainants before receiving notice of the proposed increase in rates had entered into large contracts for the delivery of lumber to points within the territory described and that they had not been able to fill these orders because of the fact that the railway companies had failed to provide sufficient equipment, and that they had on their skids a large quantity of lumber awaiting transportation to be delivered in accordance with such contracts. It was also alleged that rates on yellow-pine lumber were so high as to make it difficult to compete with lumber from northern points and from the Pacific coast, and that this also amounted to a discrimination against the yellow-pine district of Mississippi; that lumber was perhaps the most profitable of any freight originating within the southern territory, value, tonnage, and cost of handling considered. Statements were made as to the magnitude of the yellow-pine lumber business in Mississippi, the quantity manufactured and shipped, etc. It was also alleged that the old rate, as well as the increased rate, from Mississippi points to Ohio River points and beyond is from 2 to 5 cents per hundred higher than rates from Arkansas and Louisiana west of the Mississippi River, because of disguised rebates in the shape of tap-line divisions. It though was not alleged that the defendant companies had any such tap-line division of rates. It was also alleged that the companies had singled out yellow-pine lumber to bear the whole burden of what they claimed was a necessity for raising additional revenue for their uses.

The complainants alleged also that both the interstate-commerce law and the antitrust law of 1890 were violated by the defendant companies by reason of the facts alleged in the bill. The prayer was that the court would grant a temporary restraining order—restraining the defendants from continuing in effect the said increase of rates, or any increase of the rates, until the further order of the court—that the court would decree that the existing rates were unjust, unreasonable, and illegal, as being discriminatory against Mississippi points in favor of Arkansas and Louisiana west of the Mississippi River in yellow pine lumber, and also in so far as they discriminate in favor of the other woods in the same territory and impose upon a shipper of lumber the burden of equipping cars at the expense of the shipper. That upon the hearing the court would decree that a writ of injunction should issue enjoining the defendants from continuing in effect and operation the said increase of rates, and also enjoining the railroad companies from at other times or in other ways increasing the previously existing rates from and to such points without previous application to the court for a modification of the injunction. And that the Southeast Mississippi Valley Association be declared an illegal combination in restraint of interstate trade, and that the defendant companies be enjoined from prosecuting the purposes of such illegal combination, through the medium of said association, in so far as concerned the transportation of lumber to and from points directly affecting the rights and interests of complainant.

A temporary restraining order was issued by the court and a rule made upon the defendants to appear on the 15th day of May, 1903, and show cause why an injunction should not be granted as prayed for. Upon representations made by defendants that great harm might result to them from the restraining order pending the application for the injunction, the court granted permission to defendants to continue to exact the increase in rates, but with the understanding that if the court should decide against them they would refund to the complainants the excess in rates so exacted and received. Upon the day named the defendants filed a demurrer to the bill, presenting various objections in point of law to the right of complainants to maintain their bill and obtain the relief prayed. It is not necessary to set out here the various grounds of the demurrer, since upon the argument the point chiefly pressed and upon which the case went off, was that this court could not grant the relief prayed, for the reason that if

it did so it would in effect fix a maximum rate, and that this was not a judicial act which the court could perform. Other objections were made, but they are not specifically referred to for the reason stated. The restraining order was dissolved and the bill dismissed.

On the 4th day of June, 1903, the plaintiffs filed by leave of the court an amended and supplemental bill. The defendants filed a demurrer in substantially the same form as that filed to the original bill; but this court indicated a desire to hear testimony and complainants and defendants offered testimony with the understanding that the demurrer was not waived by the response of the defendants and would be considered by the court along with the facts developed. The defendants filed a joint and several response to the amended and supplemental bill. Many affidavits were filed both by plaintiffs and defendants, and many authorities cited in the argument of counsel. After a thoughtful consideration of the supplemental or amended bill it seems that its allegations are merely an elaboration of the averments of the original bill and somewhat argumentative.

The Southeast Mississippi Valley Association was made a defendant, but no relief prayed against it as in the original bill, and no relief prayed against the requirement of the companies that shippers should equip their cars with standards and strips for which freight was exacted.

The prayers of the supplemental or amended bill is in the following words:

"That said rate on yellow-pine lumber, as increased on April 15, 1903, by said several defendant companies, as now in force, be decreed to be unreasonable, unlawful, arbitrary, and discriminatory, and to be violative of the United States statutes.

"That the court will make a rule on each of the defendants, commanding them to appear before one of the judges of this court at such time and place, etc., then and there to show cause why said injunction as prayed should not be granted, and after due proceedings that an injunction and writ of injunction issue enjoining the defendant railroad companies from enforcing the said unlawful, unjust, unreasonable, and discriminatory rate on yellow-pine lumber from points within the State of Mississippi to points without said State, and to points on the Ohio River and beyond, and east of the Mississippi River, and that on final hearing said injunction be made perpetual."

It seems to me that a careful inspection of the prayer for relief in the amended and supplemental bill shows that it is substantially the same as that contained in the original bill, and that the distinction between the two, which was insisted upon in the argument, is without foundation, except in so far as there is some slight difference in phraseology.

In the original bill it was asked that the defendant companies be enjoined from continuing in effect and operation the said increase in rates and also from at other times or in other ways increasing the previously existing rates without previous application to this court for a modification of the injunction.

I thought then, and think now, that a decree such as that prayed for would have had the effect of prescribing a maximum rate beyond which the defendants could not go and beneath which they must adjust their rates.

The prayer of the amended or supplemental bill is that the increased rate be decreed to be unreasonable, unlawful, arbitrary, and discriminatory, and to be violative of the statutes of the United States, and that this court should make a decree enjoining the defendant companies from enforcing the said unlawful, unjust, unreasonable, and discriminatory rates. Now, it seems perfectly clear to me that the decree prayed for in this supplemental or amended bill, except in so far as it suggests no provision for a modification of it in the future upon the application of the defendant companies, would be exactly the decree prayed for in the "original bill."

If this court should make a decree enjoining the defendant companies from enforcing the increased rates, would I not be prescribing a maximum rate, beyond which the defendant companies could not go and beneath which they must adjust their rates? It seems clear to me that there is no distinction between the decree prayed for in the "original bill" and that prayed in the "amended and supplemental bill." I think, therefore, that my ruling upon the demurrer to the original bill must be sustained; that this court has no jurisdiction to grant the relief prayed by the supplemental bill, for the reason that to do so would also be to prescribe a maximum rate. Therefore the complainants are not entitled to a restraining order as prayed.

H. C. NILES, *Judge.*

I, L. B. Moseley, clerk of the circuit court of the United States for the southern district of Mississippi, do hereby certify the foregoing to be a true copy of the original, now of file in my office.

Witness my hand and the seal of said court hereto affixed at Jackson, in said district, this 4th day of May, 1905.

[SEAL.] L. B. MOSELEY, *Clerk.*

Senator CULLOM. I will say to you, Mr. Bacon, that we will examine all of this testimony that is put in before we come to any conclusion in the matter, including that decision as well as others.

The CHAIRMAN. Proceed, Mr. Bacon.

Mr. BACON. Mr. Chairman, I am not a lawyer, as you are no doubt aware, and of course I hesitate about giving what might be considered a legal opinion or what might be regarded as expressing a legal opinion. But it does seem to me very clear that since the passage of the Elkins law, which required absolute adherence to the published tariff rates and makes it a misdemeanor for any railway corporation to depart therefrom in any way or manner whatsoever, any person who has really suffered from extortion in the enforcement of these published rates is debarred from any remedy in the courts for that extortion—that is, the published rates having been declared by the Elkins Act to be the legal rates, any departure from them in any way having been prohibited, I can not see how the carrier can be required to make any refund from those rates, no matter how extortionate they might be made to appear before the court. It seems to me the operation of that act to make the rate published and properly filed by the carrier the legally established rate for the carrier, which not only can not be deviated from, but can not be appealed from, leads to the result that for whatever injustice is inflicted the public is absolutely without remedy. That affords another very strong reason for the establishment of a tribunal by which the correctness and equity of these published tariff rates can be determined.

Senator CULLOM. You think there is no remedy through the Commission?

Mr. BACON. I do not say through the Commission, but I think there would be no remedy through the courts.

Senator CULLOM. You suggest no possible remedy?

Mr. BACON. I was speaking of actions through the courts. I was speaking of the party injured by extortion bringing an action before the courts for relief. It seems to me there should be some method of bringing the matter before the Commission if the fact is that the rates have been declared to be the established legal rates. That only emphasizes the necessity of giving the Interstate Commerce Commission specific authority to investigate those rates, and if they find them to be unreasonable, discriminative, or extortionate, to determine what changes shall be made to bring them into accord with the provisions of the interstate-commerce law.

Now, Mr. Chairman, I wish to call attention to a fact that probably has not escaped the attention of the committee, that the presentation of this subject during the past three weeks by the railway interests has been on an assumption that the law which it was proposed to enact was to give the Interstate Commerce Commission the power primarily to establish all the rates of the country. The term "rate-making power" has been used over and over again and continuously by the railway interests in discussing this subject, whereas, so far as I know, there is no individual in the United States—I will say,

at any rate, there is no individual connected with the organizations which I have the honor to represent—who desires to have the rates primarily fixed by the Commission. It is their wish, purpose, and desire that the railroads shall be as free to establish their rates as they have ever been in the world. There is nothing in the Esch-Townsend bill which precludes or attempts to preclude that. But the idea has been conveyed, not only here, but throughout the country, through the press and otherwise, and through the dissemination of literature on the part of railway people, that the Commission is to fix all the rates of the United States, and the argument has even been made that because there are thousands of men employed in the work of rate making by the railroad companies it is ridiculous to place the power in the hands of seven men. I admit that if that were what is being sought it would be so, but the fact is, as you well know, that the power to fix rates by the Commission is merely a provisional one, and it is restricted to a complaint which is made by a shipper or by a sufferer from excessive or discriminative rates, and in such a case only is the Commission to be permitted to make any change of rates.

It has been argued that the effect of the power of making one change involves the power to make all changes. That may be theoretically the case, but, gentlemen, the length of time which would be required to change all the rates of the country through the process outlined by the Esch-Townsend bill is utterly beyond our imagination.

To show to what small extent the exercise of that power by the Commission goes, I refer to the acts of the Commission during the period of nine or ten years when it was generally admitted that it had the power to change the rates; at least, when the Commission itself assumed that power, and the power was not questioned for several years after its organization. The number of cases brought before the Commission which involved the establishment of rates during that entire period from its establishment in April, 1887, up to the time of the declaration of the Supreme Court that it did not possess this power—the entire number of cases passed upon by the Commission was 132.

Senator KEAN. What was the nature of those cases?

Mr. BACON. I say the cases in which the Commission exercised or sought to exercise the power to change a rate during that entire period of ten years was 132.

Senator KEAN. Yes; but what was the nature of those cases?

Mr. BACON. They varied. Most of them were discriminatory cases; some of them were actual cases of excessive rates, in which the decision was based entirely on the reasonableness of the rate; but the great bulk of the cases were discriminations between localities on the one hand and between commodities on the other hand. There were some cases brought before the Commission in regard to import and export rates, but all the cases involving the correction of published tariff rates were only 132 during that entire ten years, being an average of less than 14 a year. In many of the cases there were only one or two rates involved, though in some of them there were a series of rates involved; but those which did involve a series of rates were complied with in most cases, and without any such disturbance resulting therefrom as has been predicted by the railroads in their opposition to this proposed legislation. If during a

period of ten years, when this power was exercised and when it was generally recognized, and when the decisions were generally complied with by the carriers—if during that period no difficulties arose, no disturbance in the general situation of rates or any commercial interests of any kind, is it dangerous to give this power to the Commission positively and absolutely?

It seems to me that practice in a matter of this kind is of far greater value in guiding your action than theories that may be adduced or hypothetical instances or cases that may be introduced by the railway interests in opposition.

The fact is the public, the shippers—and when I say the public I include not only the shippers, but also the people upon whom freight rates fall ultimately, who are the ones who really bear the burden of the freight rates—the people are all, almost without exception, in favor not only of, but exceedingly desirous to have this legislation enacted.

On the other hand, the railways are all, and very naturally, utterly opposed to it.

Now, it is a question for you gentlemen to determine which of the two occupies the right position and whether it is reasonable and proper that the carrier, having in his hands the making of the rates absolutely and unqualifiedly, shall be permitted to exercise that power without any restraint or restriction or without supervision on behalf of the public interests.

The cases that have been brought before the Commission, as I have said, have been almost wholly cases of discrimination, and they were brought by the shippers of the country who had felt that they were discriminated against with reference to other shippers or discriminated against with reference to the shipment of other commodities. But the public at large, who ultimately bear the burden of the rate, upon whom the rate actually falls, has no opportunity of coming before any tribunal and obtaining relief. Hence it is necessary that Congress enact such legislation as will protect those people who are not in a position to come in and protect themselves.

It makes no difference to a shipper what the absolute rate is, whether it is high or low, if nobody else has a lower rate with which he comes into competition or which would debar him to a certain extent from securing his share of the business. Hence he brings his case before the Commission because his individual interest suffers in consequence of this discrimination. But the great mass of the public, upon whom the rate falls in the end, have no protection whatever, and they are not in a position to present the matter, because they have no organization for presenting their difficulties, and they have to depend upon proper legislation for their protection, which will prevent the enforcement of rates that are excessive. Discriminative rates do not affect them one way or the other, but the fact that those who are interested in preventing discriminations are not interested in the prevention of excessive rates renders it necessary that Congress of its own motion should enact legislation that will protect the public at large, upon whom the payment of the rate ultimately falls.

Senator CULLOM. You say that rebates are a thing of the past practically and that there is no discrimination practiced?

Mr. BACON. No personal discrimination.

Senator CULLOM. So that it comes down to the question whether there is discrimination as between localities. Is that the point you make?

Mr. BACON. That is one of the points. Another point is discriminations between different commodities or traffic. For instance, the freight on flour as compared with the rate on wheat—a discrimination that will put the millers out of business, and from which the millers have been suffering and complaining for a great many years past.

Senator CULLOM. Has not the Interstate Commerce Commission had that subject under consideration a long time?

Mr. BACON. They have had it under consideration, and have decided that the rate on flour should not exceed the rate on wheat by a greater sum than 2 cents per hundred pounds, and, to a considerable extent, that decision was complied with for two or three years after it was rendered; but frequently, and for considerable periods of time, there is very great discrimination between the rates on flour and the rates on wheat.

Senator CULLOM. Why does not the Commission take up the subject again?

Mr. BACON. The Commission has given its decision, and it has no power to enforce that decision, so there is no use of taking it up again.

Senator CULLOM. Why does it not take up the case again and have it decided whether the rate now charged is reasonable?

Mr. BACON. The courts have decided that the Commission has no power to change rates, and, consequently, if the Commission appeals a case to the court, the court throws it out on that ground. That was the case when there was a dispute about hay as compared with grain. Five years ago there was a change made in the classification, which raised hay from the sixth class to the fifth class, while grain remained in the sixth class, where it had been previously. Both had previously been in the same class.

Senator CULLOM. I want to understand exactly the point you are making and why you are insisting that the Commission shall have absolute power to settle these questions. As I understand, you contend that there is no way under the law, as it stands now, by which a published discriminative rate, if you please, as to the rate between flour and wheat, can be changed at all, unless the Commission has the power given to it to change it.

Mr. BACON. That is absolutely my point, and I was going to illustrate it by the hay case. After the case was decided by the Commission, in which it ordered that hay should be restored to the sixth class where it had previously been, in the same class with grain, the railways refused to comply with the decision of the Commission; then the Commission brought a case into court in the northern district of Ohio, I think it was, requesting an order from that court to enforce the order of the Commission. The court held the case about a year, and finally promulgated a decision to the effect that the Commission in making its order had exceeded its authority, and consequently the court declined to enforce that order.

During the past year there have been two other cases of that kind. One has recently occurred in California with reference to citrous fruits. The Commission decided that the rates on oranges from the

Pacific coast to the Atlantic, which was $1.25 per hundred pounds, was too high, and recommended that a rate of $1.10 be substituted.

Senator KEAN. Will you please repeat that?

Mr. BACON. The citrous fruit interests of California brought an action against the Atchison, Topeka and Santa Fe and the Southern Pacific, claiming that the rate on oranges from the Pacific coast to the Atlantic States and interior points was too high.

Senator KEAN. How many miles?

Mr. BACON. I do not remember the distance, but I should say about 4,000 miles; but that rate applies all the way from the Mississippi River to the Pacific coast. The Mississippi River, I believe, is about 2,500 miles from the Pacific coast.

Senator KEAN. Do you not believe that the Florida people thought that rate entirely too low?

Mr. BACON. That may be, but if they thought so they should have brought their case before the Commission and had it decided. The California people, as I say, brought a case before the Commission and had it decided that the rate was too high, and recommending the adoption of a rate of $1.10 in lieu of the $1.25 rate. The railways immediately gave notice that they would not change their rates. A case was brought before the courts for determination of the question and for the enforcement of the order. I think that case has not yet been decided, but, in view of the case I previously referred to, it will undoubtedly be decided the same way, that the Commission has no authority to order a change of rate.

Senator CULLOM. What other specific instances can you cite tending to show why it is necessary to provide that a commission shall have absolute power to make rates?

Mr. BACON. Before answering that, allow me to give you a third instance where the courts have lately refused to enforce the order of the Commission. That refers to this particular lumber case in the South which I have mentioned, and in which the Commission decided that this advance of 2 cents a hundred pounds was unreasonable, unnecessary, and unwarranted, and issued an order to prevent the continuance of that rate, which is precisely in line with the words of the interstate-commerce act. But the railways interested immediately gave notice that they would not pay any attention to that order, and they have not done so up to the present time. That was two or three months ago, when the order was issued. The case was taken before the courts, and the courts declined to enforce the order, on the ground that the Commission had exceeded its authority.

There are three cases within the past year in which large sections of the country are interested—an immense population—one of which covers a large part of the Pacific coast; another, covering the southeastern section of the country, with reference to lumber; and the third, covering the whole country, with reference to hay. Hay is a very extensive product, as you all know; it is raised in all parts of the country, and the producers have been subjected to a cutting of prices that they could obtain for their product by the prevention of this order of the Commission being put into effect.

Senator CLAPP. In the hay case, while it was true that the court held that the Commission had no power to establish a substituted rate, is it not a fact that in that case the court, while it stated that it was un-

necessary for the determination of the case, did condemn the order of the Commission, holding the rate to be unreasonable?

Mr. BACON. It did not enter into——

Senator CLAPP. I know it did not enter into it as a necessary part of the opinion, but is it not a fact that the court did that?

Mr. BACON. No, sir; not to my recollection. The court simply ruled that the Commission had exceeded its authority in condemning the rate, and, having done so, it declined to enforce its order.

Senator CULLOM. But did it not, in that connection, say that, while it was unnecessary, yet the court was not of the opinion that the rate complained of was unreasonable?

Mr. BACON. I do not recollect its giving any such opinion.

Senator CULLOM. My recollection is that they did.

Mr. BACON. I read it at the time, but I have no recollection of such an opinion having been issued.

Senator CULLOM. In this lumber case—which has not been reported yet and is not before us here—did the court hold that the Commission exceeded its authority, or did it hold that the Commission had no jurisdiction to make any order?

Mr. BACON. It held that it exceeded its authority in the attempt to fix the rate. That is the way I understand it, at least.

Senator CULLOM. We have not seen that yet.

Senator NEWLANDS. What was the nature of the proceedings brought in each one of those cases? Was it an action for an injunction?

Mr. BACON. The cases were brought first before the Interstate Commerce Commission.

Senator NEWLANDS. I mean the proceedings brought by the Interstate Commerce Commission in the courts?

Mr. BACON. The nature of the case in the court by the Interstate Commerce Commission was in accordance with the provision in the interstate-commerce act, that if its order is not complied with it shall apply to the circuit court to issue an order for the enforcement of its order, and it pursued that course in all these cases.

Mr. BACON. Senator Cullom, the question which you asked has passed out of my mind.

Senator CULLOM. I asked you a while ago whether you could point out any other instance than the one you referred to in the first place as to the reason why a commission should be established having authority to make the rates. The one you first referred to was the lumber case. Are there any others? What I want is to find out, as nearly as possible, the scope of the reasons why you think there ought to be a commission with the absolute power to make rates.

Mr. BACON. The cases of that kind are very numerous. They are coming up every month, and even oftener than that, in which complaints are brought before the Commission of discrimination in published tariff rates. Many of those cases are settled by the Commission through negotiations with the parties. They are usually compromised, and they are settled in that way rather than for the complainants to proceed through the ordinary processes to enforce what they deem to be their actual rights. They will give up part of them rather than to go to further trouble in the matter. Those cases are numerous, particularly the discrimination between localities. The discriminations between descriptions of traffic are also numerous. The other

discriminations to which I referred are without remedy for precisely the same reason—that the Commission has not the power to change the rate.

Senator CULLOM. Judging from the facts, that power of settlement, or power to arbitrate and come to an agreement by the Commission and the party aggrieved against the railroad or interstate-commerce line, is a pretty valuable power in the hands of the Commission as it is, is it not? In other words, the power to settle is a very important part of the Commission's duty.

Mr. BACON. The Commission renders very valuable service in that direction; but the fact that its power is limited to the discontinuance of a rate found to be unreasonable makes the power inadequate to the necessities of the case unless it can go further and say to what extent the rate found to be discriminative is so, or the rate found to be excessive is so. It leaves the question entirely in the hands of the carrier as to what extent of relief it will afford.

Senator CULLOM. You have given this subject a good deal of attention; at least you have had a good deal to say about it for the last year. If the Commission should be given the power referred to, what additional legislation would be necessary in connection with the present law, and taking into account the original act and subsequent acts?

Mr. BACON. I think that the Esch-Townsend bill covers all the requirements of the case; covers the ground very completely.

Senator CULLOM. You are for the Esch-Townsend bill?

Mr. BACON. I am heartily in favor of that bill, yes, sir; and that is the case with all the commercial organizations of the country that are associated in this movement, which comprises all of any importance throughout the country with the exception of perhaps half a dozen—less than that, probably.

Senator CULLOM. Have you heretofore filed a list of those organizations with the committee?

Mr. BACON. I did file a list with the House committee at the last session. I have not a list with me, but will furnish the committee with it on my return home.*

Senator CULLOM. I should be glad if you would, so that we will know what they are, in connection with this hearing. I think it would be well to furnish that. And how long has it been since these organizations were made?

Mr. BACON. Oh, it has been in progress for the past five years. The association of these organizations commenced in October, 1900, at the time of the holding of the first St. Louis convention. That convention was called for the purpose of promoting the passage of the bill which bore Senator Cullom's name and which was introduced in the Fifty-sixth Congress.

Senator CULLOM. You mean Senator Elkins's name.

Mr. BACON. No; the promotion of the bill which went by your name, which was introduced in December, 1899. That convention was called for the purpose of promoting the passage of that bill, and that bill, as you are probably all aware, went very much further than the Esch-Townsend bill—that is, it comprised a greater number of purposes, a greater number of changes in the interstate-commerce

* List referred to will be found at the end of this volume. It was received too late for insertion here.

act, than are comprised in the Esch-Townsend bill. After endeavoring to secure the passage of that bill during that Congress, the association prepared a new bill much less comprehensive in its features and its provisions, and worked for the enactment of that bill.

Senator DOLLIVER. What was that—the Nelson bill?

Mr. BACON. That was the Nelson-Corliss bill. Still later it reduced its demands further and sifted them down almost exclusively to the one point of conferring this power upon the Commission, which was embraced in the Cooper-Quarles bill; and that, as you know, has been superseded by the Esch-Townsend bill, prepared under the direction of the House committee.

Senator CULLOM. The main purpose of the Esch-Townsend bill, as I suppose—I have not studied it much—is the purpose to legislate the power into the hands of the Commission to fix the rates. That is the main feature in that bill, is it not?

Mr. BACON. To revise rates; yes, sir; to correct them when they are found, upon investigation, to be unjust or unreasonable.

Senator CULLOM. Mr. Bacon, a thing that has puzzled me is this: When the original act was passed the great complaint was rebates and unjust discriminations. Since we have entered upon this investigation here this spring men have come before us and said, "Rebates are a thing of the past;" "Discriminations are a thing of the past." They were the only things that seemed to require very much legislation, in the first place. Now they are gone, and the query is, to my mind, what the occasion is now for more legislation. That is why I am trying to find out from you just what you are driving at.

Mr. BACON. I think the Senator will recall, if he goes back to the enactment of the original interstate-commerce act, that unreasonable rates constituted at that time——

Senator CULLOM. Oh, yes.

Mr. BACON (continuing). As important an object to be accomplished as any—that is, the prevention of unreasonable rates and the prevention of the payment of rebates.

Senator CULLOM. Undoubtedly that is so, but the great complaint was what I have stated; and to-day, so far as we can learn, there is not a very great amount of complaint against the rates being unreasonable.

The testimony is that rates are going down all the time.

Mr. BACON. The complaints brought before the Commission, as I said before, are brought chiefly on the ground of discriminations, because shippers, who are the ones directly or primarily interested in the prevention of discriminations between localities and commodities, are the ones who bring the cases before the Interstate Commerce Commission. The people at large, who suffer from the payment of excessive rates, lack the means and the opportunity of coming before the Commission and presenting their complaints. Those complaints are very general throughout the entire country. The live-stock interests appeared before this committee during the last session of Congress, represented by Judge Cowan, and laid before the committee a statement of excessive rates, continued advances in rates, that had been made during the past two or three years, by which the cattle industry was very greatly crippled, and, in fact, to a very large extent the raising of cattle in the Southwest had been very much interfered with by the excessive rates charged. He presented that very fully before the committee. The lumber interests have also presented very fully the

fact of the advanced rates upon their product, and that the advances have very greatly restricted their operations. Other interests have presented similar complaints before this committee; and throughout the whole country there are complaints of excessive rates.

The complaints from California that I just referred to show what the feeling is there. And so I may go over the country from one section to another and from one interest to another, and there are extensive complaints of excessive charges having been inflicted during the past five years. Up to five years ago there had been a steady decline in rates of freight; but at that time an extensive advance was made in rates by means of changes in classification, which has also been fully presented before this committee. There were in official classification territory, as it is termed, which covers the country east of the Mississippi and north of the Ohio and Potomac rivers, changes in classification numbering upward of 500, by means of which property or articles were placed in a higher class than that in which they had previously been placed—that is, they had been raised from a lower to a higher class—and an estimate was made by the Interstate Commerce Commission as to the effect of that change in classification upon actual rates charged in consequence of it, and it was stated by the Commission that it amounted to an average of 21 per cent. That was a very extensive change——

Senator KEAN. What do you mean by an average of 21 per cent?

Mr. BACON. Taking the various commodities which had been changed from a lower to a higher class and figuring up the rates that had previously been charged on those articles, and comparing them with the rates charged under the new classification, produced an average of 21 per cent—that is, showed an average increase of 21 per cent in those articles.

Senator KEAN. You think that is a fair statement, do you?

Mr. BACON. It is not absolutely mathematically correct, because it is absolutely impossible to arrive at it. To obtain an absolute mathematical correctness you would need to know the exact tonnage of each one of those articles that was transported and the distance it was transported. It does give the general effect of that change in classification.

Senator KEAN. Upon what commodities did they raise the rates—on silks and satins?

Mr. BACON. On every conceivable commodity. Not on those articles; no, sir. Those are first-class commodities, and the changes were made mostly from the very low classes to higher classes—from fifth to fourth or third, and from fourth to third or second, and so on. The changes were applied on articles which were the subject of the greatest amount of traffic, applied upon the greatest amount of tonnage, applied expressly for the purpose of producing the greatest increase in revenue, and the probability is that instead of this 21 per cent being too high it is not high enough, for the reason that the articles that were raised constituted a very much larger proportion of the whole articles included in the classification list, a much larger proportion of the tonnage, than the number of articles bore to the entire number of articles in the classification. I referred to that only to show the process that has been going on during that time in the advance in rates throughout the country. And it is from that cause that these complaints in regard to excessive rates have been brought to the attention of the committee, and from that cause that this effort

has been made to secure power somewhere to prevent advances that an independent and impartial tribunal should deem to be unnecessary.

Senator KEAN. Would you also give them the power to control the price of commodities?

Mr. BACON. I do not think, Senator, that that enters into the question at all. The performance of the public service of the railway companies is an entirely different thing from the commercial trading between individuals, each of whom and all of whom are on an equality. The two parties in commercial transactions are on a par, and they can buy or not as they choose, or sell or not as they choose; but transportation is an article which everybody must have, and it is an article the price of which is fixed entirely, at the present time, by the carrier—by one of the two interested parties. But it becomes, in effect, a tax-levying power, because these rates are fixed not with reference to the cost of the service. That would be impracticable. If rates were fixed with respect to the cost of the service, nine-tenths of the present traffic of the country would be stopped. It would be utterly impossible to transport the traffic if the rate were fixed upon the actual cost of transportation. Hence it has to be distributed all through these various commodities contained in the classifications, of which, I think, there are something over 2,000. It has to be distributed all through those commodities according to commercial conditions and circumstances and according to what the commodities are entitled to, each with reference to the other. It becomes, as I say, in consequence of that, a simple assessment—an assessment upon the public for the service of transportation—and that being practically a tax-levying power, it should be under the control of some governmental tribunal, to see that it is exercised with justice and equity.

Senator KEAN. Is not that what the existing law provides for?

Mr. BACON. It only provides partially for it. It provides for the ordering of a rate that is found to be excessive or discriminative to be discontinued. It is still left with the assessing power to say what change shall be made in that assessment, and hence its operation is very inadequate and ineffective.

Senator CULLOM. You spoke of the railroad hauling a good many things for less than cost. You would not expect the Commission to require them to do that, would you?

Mr. BACON. I do not mean the cost of transportation. What I mean is this: If the cost of transportation may be figured out to a certain amount per ton per mile, and if that cost were applied upon every commodity offered for shipment, it would exclude from transportation at least nine-tenths of the traffic of the country. That fact necessitates that certain articles that are of large value and will consequently bear a high rate shall be assessed at ten times, we will say, the cost of the transportation; probably in many cases much more than that. Take silks, or any valuable articles, and they must bear ten or twenty times the cost of actual transportation in order that other articles of transportation which it is essential to the public interest shall be transported may be transported at a rate which those articles will permit to be placed upon them. The cost of transporting a carload of silk does not exceed the cost of transporting a carload of iron ore, but if you placed an average cost upon both those articles

you never could move iron ore more than probably 50 miles from its place of origin.

Senator CULLOM. What we want to find out is the kind of legislation necessary in the interest and for the welfare of the people as well as of the railroads, and what power it is necessary to give to a commission, if we have one, and what power ought to be withheld from the commission and given to the courts, in the interests of the general public.

Mr. BACON. Senator, I was greatly interested in reading the opinion of the Attorney-General in relation to the power of Congress to give to the Commission this power that is desired, and it seems to me that that opinion covers the ground very completely.

Senator CULLOM. It covers the ground as to the power of Congress, and the power of Congress to delegate that power to a commission. There is no trouble about that, in my judgment. But what is the wise thing for Congress to do is the more important question in reference to the exercise of its power.

Mr. BACON. Well, we have had the experience of ten years under the present interstate-commerce act and——

Senator KEAN. The Elkins law was not passed until 1903.

Mr. BACON. I am speaking of the interstate-commerce act, which was passed in 1887. We had the experience for ten years of the exercise of this power by the Commission which is now proposed to be conferred upon it, and since the time, 1897, when the decision was rendered that it had not that power we have had the experience of the absence of it; and the experience in both those periods shows very clearly the necessity of the existence of this power. The power having been denied to the Commisison by the Supreme Court, it has been found absolutely essential that it should be conferred upon it; and it will only be by conferring that power upon the Commission that the public will have any protection or any relief from abuses to which they are now subjected or difficulties under which they now labor.

The primary provision of the interstate-commerce act that all charges shall be just and reasonable, and that every unjust and unreasonable charge shall be unlawful, is absolutely without means of enforcement except by conferring upon somebody, some organ of the Government, the power to determine whether or not the rate is unreasonable or unjust, and, having determined that, the power to go further and say what rate is reasonable and just in that particular case, and to apply that rate and to enforce it. It is only by means of such a provision as that that the country will have any protection whatever from unreasonable demands that are made by the carriers, or from discrimination that is made by them for various reasons of their own—that is, reasons in favor of certain points in which they are interested in order to obtain a larger share of the traffic. I do not charge the railroads with desiring to practice injustice, but self-interest leads them to go as far as they may in promoting their own business, and it probably, in some instances, affects their judgment as to what is exactly right and fair between different communities and between different commodities.

Senator KEAN. Of course, self-interest does not affect any of the rest of us in our judgment, does it?

Mr. BACON. That has a very natural influence upon all human minds, so far as my observation extends.

Senator NEWLANDS. Whether shipper or carrier?

Mr. BACON. Whether shipper or carrier; yes.

Senator KEAN. Or a dealer in grain?

Mr. BACON. I think it is very universal, Senator. I am willing to admit that I am quite as subject to it as any other human being. I claim no superiority in that respect.

Senator NEWLANDS. Mr. Bacon, assuming that we give to the Interstate Commerce Commission this power of determining what is a reasonable rate, the question then arises as to how the Interstate Commerce Commission shall be organized; what the number of Commissioners shall be; whether the Commissioners shall sit simply in one place or sit in districts, and possibly in banc at times. I wanted to ask you regarding that. You have heard the testimony of some of the railway officials to the effect that the services of a very large number of men are required in the traffic department, not simply in the railroad's interest, but in the public interest, to observe the varying conditions with a view to adapting the rates to those conditions, and that the necessity for a change in a given rate may arise in an instant and must be determined in an instant. You have the testimony of one of the officials to the effect that in the Southern States there are over a hundred men who are engaged in this business of adjusting rates, and that that number is absolutely essential to the determination of these rates in the interest of the public; and that that business constitutes about one-seventeenth of the whole, thus necessitating 1,500 or 2,000 officials who are engaged in this business of watching conditions and adjusting rates to these conditions. Now, what have you to say regarding the possibility of any commission organized by the Government covering that vast field of effort and covering it adequately in the public interest as well as in the interest of the railroads?

Mr. BACON. I should say if they were to undertake to fix all the rates of the country, as it has been given out by the railway interests that they are expected to do, that it would be utterly impracticable. That could not be done by any less number of men than those that are now engaged in it by the carriers. And I consider it absolutely impossible—beyond human possibility—for any set of men to fix rates for the entire country—primarily, I mean. The only way they can be properly fixed, both in the interest of the public and in the interest of the carrier, is by each road fixing them for itself and by the various roads coming into conference with one another and determining upon what the rates shall be. It would be utterly impossible for a commission sitting in Washington or sitting in any central part of the country to fix rates for all parts of the country. It would be an absurdity, in my opinion, for any body of men to attempt it. I do not see that that has any bearing, however, upon the question, because all that we are seeking is that when rates are believed by certain individuals who are interested in them to be wrong, those particular rates shall be brought to the attention of this particular body—you may call it a commission or what else you please.

Senator NEWLANDS. Your contention is, then, that the views of the carriers that the conferring of this power will ultimately mean that the Commission will fix all the rates is an exaggeration?

Mr. BACON. It is grossly exaggerated. As I was saying before you came in, the number of cases brought before the Commission

during the ten-year period in which it was understood to possess this power and exercised it, and in which it was generally complied with, reached only 132 cases, being an average of less than 14 cases per annum. Many of those cases involved only a single rate; some involved numerous rates; but in either case, in the cases where they involved numerous rates they produced no disturbance in commercial conditions, no disturbance in traffic conditions. The orders were complied with, as a general thing, and were carried out, and produced the utmost satisfaction both to the public and to the carriers. They settled the disputed questions, and the Commission is perfectly competent to take up those questions as they arise and consider them and receive the testimony from both sides and hear the arguments on both sides and reach a correct conclusion as to what is just and right in the premises in any particular case. These cases are no more difficult than other cases that come before the courts.

Senator NEWLANDS. I presume you admit that the business of the Commission would be considerably enlarged by giving them this power, over and above what they have now?

Mr. BACON. There were only five Commissioners while this power was exercised for ten years.

Senator NEWLANDS. And now there have been——

Mr. BACON. There are to be seven, according to this new bill.

Senator NEWLANDS. You think that would be a sufficient number?

Mr. BACON. It seems to me that it would be.

Senator NEWLANDS. What would you think of a method of organizing this Commission which would require the President to select as Commissioners men who had been trained as traffic managers, so that the Government itself could have the benefit of the largest experience and training in this work, and then, having this Commission so organized that one branch of the Commission, composed, say, of four or five members, would look after all the business west of the Mississippi or the Missouri, and another commission of five would look after all the regulations in the States comprising what is known as the Southern States, another branch attending to the New England and Middle States, and sitting, when occasion required, in banc; would not a commission so organized, and composed of trained railway men, be likely to discharge the duties of the commission with greater efficiency than a commission composed entirely of men who are of legal training, who are trained more for the exercise of the judicial faculty than the rate-making duty; and could not such a commission work more efficiently?

Mr. BACON. I should say in reply to that that it might be advantageous to have one member of the Commission an expert traffic man; but these cases, it seems to me, are not particularly different from other cases that come before courts. The Commission can hear the testimony from both sides, hear the arguments and get the facts, and get the relation of the rates that they are considering to other rates, and can form an intelligent and correct opinion in regard to them, without resorting to what might be called expert testimony to determine it.

Senator NEWLANDS. Have you in view, for instance, this stock case, embracing the States and Territories around Texas, which I am told has been before the Commission, for much over a year, and in which volumes of testimony have been taken, and no determination

is yet reached? In such a case as that, would not a commission consisting of traffic men and managers, the best men in the country, such men as we are now utilizing in the construction of the Panama Canal, such men as Mr. Shunts, get instinctively, almost, at a correct determination of the question, without going through this elaborate process of taking testimony and having arguments and deciding a case as a case is decided in court? I do not understand that the traffic managers themselves, when they meet, go through any such elaborate process; because every traffic manager has a certain amount of accumulated experience which avails him in this work. Would not a commission so organized be able to act more quickly and more efficiently than a commission composed simply of men who had been trained for a judicial life?

Mr. BACON. The Commission acquires this information and this knowledge from experience. They accumulate experience and knowledge in relation to these traffic questions from year to year, and, in many of these cases, they fall back upon that accumulated knowledge and information, and that renders it unnecessary to enter into the discussion of numerous questions that have a bearing upon the case.

I do not believe that the questions relating to the justice and equity of rates can only be determined by men who have spent a lifetime in that business. I believe that men of general intelligence, men of legal experience and of judicial minds and analytical powers can arrive at the necessary data in an ordinary length of time, the same as courts in general do in relation to the cases that come up before them, so as to enable them to determine correctly and rightly what the rates in the particular case before them should be. I do not think it requires a man who has been all his life in the traffic service to determine the justice of a particular rate or a particular series of rates.

Senator NEWLANDS. Admitting that it is a wise thing to have men on this Commission trained, as the present Commissioners have been, in the law and with the accumulated experience which they have acquired, would it not be wise to provide for an addition to this Commission, enlarging its membership and organizing districts such as I have suggested, and have a very large proportion of this Commission made up of men who had been trained in rate making and in traffic? Would you have any reason to doubt the fairness of men so chosen, taken right from the railroad profession itself, and put into the service of the Government? Would there be any reason to doubt that they would act fairly toward the people if their relationship were changed from that of employment by the carrier to that of employment by the Government?

Mr. BACON. I should not question their intentional fairness, but a man who has been trained to take one view of things for years and years naturally acquires ideas in relation to them which might not be entirely correct with relation to the other side. A man who has been proceeding from self-interest and from a desire to promote the interests of the company he serves is quite liable, in the course of twenty years' experience, we will say, to acquire ideas that are not entirely correct with reference to the public interests.

Senator NEWLANDS. And you would fear that tendency in so constituting a commission?

Mr. BACON. I think there is that liability, certainly. I think the appointment of one traffic expert on the Commission, for the purpose of giving his views upon the questions that come up for the consideration of the whole Commission, would, perhaps, be desirable.

Senator NEWLANDS. Regarding the organization of the Commission as to numbers and their segregation into district commissions such as I have described, would you believe it wise to keep the Commission as at present organized, with its headquarters at Washington, or to enlarge its membership and have a certain number assigned to each district, with a view to expeditiously doing the work in that district and familiarizing themselves with all the conditions there?

Mr. BACON. I do not think that would be practicable, Senator, from the fact that the rates from the different districts are so interlaced with one another that they must be considered as a whole. They can not be treated from a sectional point of view. The rates extending from one district into another are so numerous that they can not be separated or divided. They have got to be treated as a whole. It might be that the Commission might arrange itself into what might be called "sections," with certain men giving especial attention to one particular section, and then they could come together and act jointly with reference to this interlacing of rates between the different sections; but to attempt to divide it up into sections, to be treated by different commissioners, I do not think would be practicable.

Senator NEWLANDS. And yet, as a matter of fact, that is the way the railroads conduct the business of rate making to-day, is it not? They have certain traffic managers who have their headquarters at Chicago and certain traffic managers who have their headquarters at St. Louis, certain others with their headquarters at San Francisco, and others at Boston and others at New York, and they come into communication with each other in some way and settle these rates that involve interlacing districts. If we are going to give this Commission the power of revisions, why would it not be wise to follow practically the evolution of the railroads themselves in the matter of rate fixing? And if they have come to the adoption of that system as the result of experience, would it not be wise for the Government in its selection of a body of revision to follow somewhat the same plan?

Mr. BACON. It might be applied to a certain extent, but not generally. The divisions of country among the railroad traffic associations are very large, one division covering the territory north of the Ohio and Potomac rivers and east of the Mississippi; another division covering the territory west of the Mississippi; and another division covering the Southeast, south of the Ohio and Potomac rivers and east of the Mississippi, and another covering the Southwest.

Senator NEWLANDS. About how many such divisions are there now?

Mr. BACON. Well, I should think there are four or five—perhaps half a dozen general divisions. Then, in each of those divisions there are subdivisions almost without number. I think Mr. Bird, who is here, and who represents the Missouri Pacific Railroad, could tell you more definitely about that than I could. There are five, I understand Mr. Bird to say.

Senator NEWLANDS. Regarding the inflexibility of the rates after

he Commission has exercised its power of revision and has declared ı rate to be unreasonable and has fixed a reasonable rate, the complaint ıf the railroad men is that that rate so fixed is inflexible and differnt from the rates which the carriers fixed themselves in this, that he carriers' rates are always subject to readjustment in a moment, vhenever a condition arises that requires a readjustment, and those onditions often arise in the interest of the shippers themselves.

Mr. BACON. They must be adaptable.

Senator NEWLANDS (continuing). The representatives of the railoads say that they have to feel the pulse of the mercantile comnunities all the time, and adjust their rates to the prevailing conlitions, thus requiring a flexible system of rates. Their contention s that if the Commision fixes the rate, that becomes inflexible, and hat if the Commission fixes many rates the result will be that in the nd we will have an absolutely inflexible system.

Mr. BACON. I get your idea, and I believe fully that there should e, and must be, continuous flexibility. I suggested an amendment o the Esch-Townsend bill to provide for such flexibility.

Senator NEWLANDS. How would you provide for that?

Mr. BACON. I would provide that a rate fixed by the Commission hould be changed by the carrier upon changed circumstances and onditions, either upon its own judgment or by application to the Commission.

Senator KEAN. Does that mean a maximum or a minimum change?

Mr. BACON. The Esch-Townsend bill provides for the fixing of n absolute rate, you know.

Senator KEAN. Yes.

Mr. BACON. Neither maximum nor minimum.

Senator KEAN. You would not apply it to the raising of this rate, vould you?

Mr. BACON. I think that if occasions arise which render the raising ıf the rate necessary in the fair relation of interest between the ublic and the carrier that they should be raised just as readily as hey should be reduced.

Senator NEWLANDS. And would you give the carriers the power o do that?

Mr. BACON. Placing the responsibility upon them to be able to how that there is a change in conditions and circumstances which ecessitate it.

Senator NEWLANDS. And would you require them to show that hange of conditions before the new rate went into effect? I undertand that would not be adequate, because oftentimes they are comelled to put this rate into operation immediately in order to meet he conditions.

Mr. BACON. I would not; but I would make them amenable to the Commission upon citation by the Commission to show cause for that hange—to appear before them and justify the change.

Senator NEWLANDS. I see; then that would meet this question of lexibility, would it not?

Mr. BACON. I see no cause for objection.

Senator NEWLANDS. You see no objection to immediately meeting onditions in that way?

Mr. BACON. Not at all.

Senator NEWLANDS. By giving the carriers authority to act upon their own responsibility?

Mr. BACON. That is it exactly.

Senator NEWLANDS. To meet existing conditions, subject to the power of the Commission to cite them before them and compel them to justify the change?

Mr. BACON. Yes; and furthermore I would say that I would prefer to see, instead of an absolute rate fixed, a maximum rate. I should prefer to see the Commission empowered to fix a maximum rate.

Senator NEWLANDS. So that the carriers could, if they chose, diminish the rate?

Mr. BACON. Certainly; yes, sir.

Senator NEWLANDS. Without applying to the Commission?

Mr. BACON. Yes.

Senator NEWLANDS. You would also give them the power to go beyond the maximum rate?

Mr. BACON. If they justified it before the Commission.

Senator NEWLANDS. And allow them to do it immediately, giving them the opportunity afterwards to justify themselves before the Commission?

Mr. BACON. With the usual ten days' notice; yes, sir.

Senator NEWLANDS. Mr. Bacon, you admit, of course, the rights of property of investors in railway securities, the bondholders and stockholders, and you wish to give those property rights adequate protection, do you not?

Mr. BACON. To be sure. They are just as much entitled to protection as the public.

Senator NEWLANDS. And that is the view of the people whom you represent?

Mr. BACON. Wholly so; yes, sir.

Senator NEWLANDS. That would involve, then, the adjustment of the rates on each railroad in such a way as to give them, first, their operating expenses; second, the amount necessary for the maintenance of their road, so as to keep it in good order and condition; third, their taxes; fourth, the fixed charges in the shape of interest upon their bonds; and, last of all, the interest represented by the stock. Now, regarding that interest: How would you value that interest and how would you fix the return to which they are entitled so as to have this thing mathematically adjusted in the way of protecting property?

Mr. BACON. I hardly think that could be fixed by law, Senator. I think that would be a matter that should be taken up in the specific case that comes before the Commission, considering the particular circumstances and situation of the corporations who constitute the defendants in that particular case.

Senator NEWLANDS. You would expect, however, the Commission to give a fair valuation to the interests represented by the stockholders, would you not?

Mr. BACON. Most assuredly; the genuine interests represented by them.

Senator NEWLANDS. In many cases we know that the bonds have practically constructed these roads, and that the stock represents really the profit upon the undertaking, or a good portion of the stock, at all events, without any real investment in money. Assum-

ıg such a case, and assuming that this stock has gotten a value in ıe market by reason of the declaration of dividends or the prospect f dividends, and it has become widely distributed, that it is not ı the hands of the original promoters of the railway, would you xpect the Commission to give a value to such stock?

Mr. BACON. It seems to me that those are questions that require great deal of consideration and that could not be provided for by atute, but that must be taken up case by case as they arise.

Senator NEWLANDS. Ought we not to provide for it, if fairness to xisting property rights requires it? Of course the bonds will lways be recognized. There is no question about that. That interst in the property will always be recognized. But the remaining nterest is the stock, which often represents mere increase in value, vithout any real investment in money—an increase in value which s recognized in the market by the sale of these stocks at certain uotations, some of them above par and some below par. The olders of these stocks are apprehensive as to our legislation, and hey want us to protect their property rights. Is there not something hat we can do, with justice to the public at large, to indicate that we lo not propose that that property right shall be confiscated?

Mr. BACON. I hardly see how that could be reached by statute.

Senator NEWLANDS. We could compel a valuation of that stock by he Commission to-day at its market value, could we not—an ascerainment of it by an order of the Commission in the case of each ailway?

Mr. BACON. It might be made the duty of the Commission to do hat, to be sure.

Senator NEWLANDS. And then, having arrived at that as a starting point, perhaps having validated a great deal of the water of the ast, could we not guard against watering in the future——

Mr. BACON. Undoubtedly.

Senator NEWLANDS (continuing). By providing that no stock hould be issued except for money actually paid or property turned ver?

Mr. BACON. Undoubtedly such provision could be made with refrence to future issues of stock.

Senator NEWLANDS. Would it not be greatly to the interest both f the existing investment in railway stocks and to the great advanage of the public in the future if we could guard against overapitalization in the future, however much the overcapitalization of he past we may be compelled to validate?

Mr. BACON. It would certainly be in the interest of the public to do that.

Senator NEWLANDS. And would it not be a liberal and just settlement of the question to validate the overcapitalization of the past in order to reach an adjustment of this kind?

Mr. BACON. That is a question that I have not given much thought to, Senator, and I would not like to express an opinion offhand upon it. There are many considerations that come into the determination of that question.

Senator NEWLANDS. Is there not a certain amount of justice in it? Assuming that these values have been created without any money being actually put in, has it not been the result of the negligence of the representatives of the people themselves, in not shaping laws that

would prevent overcapitalization, and, as a result of their negligence, has not this stock been put upon the market generally, and has it not gone into the hands of people who have paid value for it and who are entirely innocent of the original transaction by which the overcapitalization was created?

Mr. BACON. I do not quite see how the Government can be held responsible for foolish investments made by the public in stocks that had no value.

Senator NEWLANDS. I am not talking about foolish investments made by the public in stocks that have no value, but I am talking about investments made by the public in stocks that have a market value to-day, and a recognized value, notwithstanding overcapitalization.

Mr. BACON. The market value and the real value are two different things.

Senator NEWLANDS. That is just the point I want to get at. Would you expect such a commission to revise these values that have been placed by the market upon these stocks, and to imperil the investments of the hundreds and thousands of people who now have shares of stock in railroad companies and who are entirely innocent of the original transaction that involved overcapitalization?

Mr. BACON. It strikes me that those are cases that would necessarily come before the courts for consideration under appeal from the decisions of the Commission. If the Commission decides a certain rate to be unjust or unreasonable or excessive, the question of the value of the property used by the corporation forms one of the elements of the decision of that question; and when the question comes before the courts on appeal from the decision of the Commission, the courts then can go into the question in each case as to what extent it must recognize the value of those overissues of stocks.

Senator NEWLANDS. And you would leave that to them, without establishing any principle at all in the bill itself?

Mr. BACON. It seems to me that would be the safer way; yes, sir.

Senator NEWLANDS. As to the return of interest in the shape of interest upon the shares of stock; of course the interest upon the bonds is fixed by the terms of the bonds themselves, and, as I understand it, that rate is gradually diminishing, so that the public have the benefit of it in diminished rates, or should have the benefit of it in diminished rates. Now, as to the rate of interest that should be given to the balance of value in the hands of the stockholder, whose interest is entirely subject to the mortgage of the bondholder, would you expect the stockholder to get a higher rate of interest than the bondholder?

Mr. BACON. It would seem as though the stockholder should have a higher rate, because the bondholders' rate of interest is absolutely assured. It is a positive, fixed thing.

Senator NEWLANDS. Yes.

Mr. BACON. And unless paid the property would be foreclosed; but the stockholder takes a certain risk.

Senator NEWLANDS. In that case the bondholder would take the whole and the stockholder would get nothing?

Mr. BACON. That very fact puts a risk upon the stockholder which necessitates a larger return to him, to compensate him for that risk;

so that, properly, the dividends on stocks should be greater than the interest on bonds.

Senator NEWLANDS. Assume that the rate of interest on bonds is 4 per cent, what higher rate of interest do you think the stockholder should receive?

Mr. BACON. Well, that is a question I do not feel qualified to go into, Senator. I know it is a fact that the stocks of first-class railroads now on the market are selling upon a basis of a return of between 4 and 5 per cent. That is, a stock that makes a 6 per cent dividend is selling at about 150, and a stock that makes a 7 per cent dividend is selling at about 175, and so on; and a stock that only makes a return of 2 or 3 per cent dividend is selling at 50 or 60 or 75, as the case may be. The average measure in the market of stock values, of the return upon stock values, seems to be in the neighborhood of 4½—from 4 to 4½ per cent.

Senator NEWLANDS. You would not want to discourage railroad building in the future, would you, by any action of Congress?

Mr. BACON. Not by any means.

Senator NEWLANDS. Assume that that principle were established, that where a new railroad company was incorporated it could issue bonds and stock, in both cases for money actually paid in or property delivered at its real value, and assume that it was established as a principle, either by the law itself or by the courts, that if the bondholder received 4 per cent the stockholder should receive 5 per cent, because of the additional risk, do you think that would be sufficient inducement to bring about the necessary construction of railways in the future and to keep up the railroad development of the country?

Mr. BACON. It seems to me that that is a thing that had better be left to the public entirely, to act upon its own option in respect to, and the operation of commercial laws will regulate that without any difficulty.

Senator NEWLANDS. But recollect that we are not allowing commercial laws, unrestricted, to control. We are putting upon this property the regulation by Congress of its income, practically. It is claimed by prominent railroad men who have appeared before us that if we pass this bill it will paralyze railroad construction of the future.

Mr. BACON. That has been claimed for the past thirty years, whenever it has been proposed to regulate railway rates within State limits; but the regulation has, nevertheless, gone on, and the result has not been realized.

Senator NEWLANDS. And you think that that is an exaggerated fear?

Mr. BACON. Experience has shown it to be so.

Senator NEWLANDS. There is this difference, that the railway commission only exercises control over about one-fourth of the commerce of a particular railroad, while this Commission would act upon the other three-fourths. I believe it is well understood that on the average about one-fourth of the business of any given railroad is State commerce and three-fourths is interstate.

Mr. BACON. I think that is purely guesswork. I have sought to ascertain information on that point and have been absolutely unable to obtain any statistics relating to it. So far as I have been able to discover, there are none.

Senator NEWLANDS. How would you fix the proportion? Would you not say that the interstate business far exceeds the State business?

Mr. BACON. No doubt it exceeds it, but to what extent is mere guesswork.

Senator NEWLANDS. Assuming, then, that it is only 50 per cent, we have now 45 State tribunals operating upon, say, 50 per cent of the commerce of all the railroads, and it is now proposed that Congress should act upon the other 50 per cent. Do you not think that the claim of that power and the exercise of it, without putting in our statute itself any saving clause as to the protection that should be given to that property in the shape of a fixed return, might prevent or imperil the railway development of the future?

Mr. BACON. I think that is a thing that will take care of itself without any difficulty. There is an abundance of capital in this country, as everyone knows, that is seeking investment, and a very low rate of interest is satisfactory to those who are the possessors of that capital. The increase in railroad properties and extensions will bring out that capital at such points as the return on the investment seems likely to produce. It seems to me that it is perfectly safe to leave those things to the operation of financial laws.

Senator NEWLANDS. You would not fear anything at all confiscatory from the action of this Commission or any action whatever under the proposed legislation?

Mr. BACON. Why, it seems to me absurd to assume that a commission charged with the duty of fixing rates which shall be fair to the carrier, remunerative to the carrier, and at the same time fair to the public, should go below the line of actual remuneration. I think the probability is that the Commission would be very careful not to go to the line, for fear that it might get too low, and its tendency would be to keep well above it for the sake of safety.

Senator NEWLANDS. And you think your views upon this question are the views that are generally entertained by the people whom you represent, the members of these various commercial organizations?

Mr. BACON. I hear these views expressed—at least some of them—very generally and very frequently.

Senator NEWLANDS. There is no radical or violent or confiscatory sentiment that you are brought in contact with?

Mr. BACON. Very little of it, and what there is of it is suppressed, so to speak; sat down upon by the great majority of those who are interested in this movement.

Senator NEWLANDS. Mr. Bacon, your views seem to me to be entirely fair and just regarding the return upon railway capital. I ask you why would it not be possible for you and other representatives of the shippers and business men of this country to sit down with the railway managers, right in this committee room, and help us shape a bill that would protect everybody; a bill that would protect the public, would protect the carriers, would protect the bondholders, would protect the stockholders, and would protect property rights?

Mr. BACON. Certainly the commercial interests are very ready to do that so far as they may be able. They have been giving their advice in that direction during the past four or five years as effectually as possible. It is not the desire of the commercial organizations that I represent to oppress the railroads in any way whatever.

It is simply their desire to obtain equity between themselves and between different localities in various matters of traffic, so that one will not have an advantage over another, and so that the public, whom these men serve, will not be required to pay what is an unreasonable or an excessive rate.

Mr. Chairman, I want to make a few remarks in regard to the statement which has been made that railway rates have been continuously decreasing for the past twenty years or more.

While the average rate per ton per mile has been steadily decreasing and has largely decreased, that does not indicate that rates have decreased. That may seem a strange statement; but there is nothing in the statistical world more deceptive, to my knowledge, than the average rate per ton per mile earned by any railroad company or by a combination of railroad companies.

Rates themselves, the specific rates, may remain entirely unchanged for any given length of time, and yet every year will show a difference in the average rate per ton per mile, arising from the fact that there is a great variation in the specific rates, the higher classes of goods being charged, of course, at a much higher rate than the lower classes of goods, and the average rate is affected by the proportion of each of those classes of goods.

To illustrate: Suppose there is one rate of a dollar and another rate of 50 cents, and that those are the only two rates in force on a given line of railroad during a given year. If the proportions of the two classes of freight were equal during that year, the average rate would be 75 cents per ton per mile during that year. The next year, if there should be two-thirds of the lower class as against one-third of the higher, the average rate per ton per mile would be reduced to in the neighborhood of 60 cents per ton per mile.

That serves to illustrate the working of the average rate per ton per mile. The fact is that during the past twenty years—in fact, you may go back further than that—according to the statements of the Interstate Commerce Commission and according to all statistics that are available, there has been a constant and a rapid increase in the proportion of low grades of freight which have been transported throughout this country.

The CHAIRMAN. You mean the prices have advanced on low-grade freight?

Mr. BACON. No; not the price—the tonnage.

The CHAIRMAN. The tonnage, you mean?

Mr. BACON. The tonnage of the low-grade freight has greatly increased from year to year.

The CHAIRMAN. Yes; that is what I understand.

Mr. BACON. Until, in fact, it has been a study of traffic managers to reduce rates on low-grade freight sufficiently to increase the movement of that class of freight; and that has been going on from year to year. Rates have been steadily reduced on these low-grade products so as to increase the tonnage. The profit of a railroad, as well as the profit of a business concern, comes from the magnitude of its business. By making extremely low rates for traffic that will move only at such rates, the profit of the railroad is increased; but that very process reduces from year to year the average rate per ton per mile.

As a matter of fact, the class rates between New York and Chicago

are substantially—in fact, almost wholly—the same now that they were when the interstate-commerce act was passed, eighteen years ago.

Senator KEAN. What rates?

Mr. BACON. The class rates between New York and Chicago. The class rates embrace merchandise and manufactures and material of that kind which bear relatively higher rates than the low-grade traffic; but those rates remained substantially stationary until five years ago, when they were greatly advanced by the change in classification.

The rate between New York and Chicago governs the rate on a very large section of the country. All rates as far west as the Mississippi River are based upon the Chicago rate. Points on the Mississippi River take, for instance, 116 per cent of the Chicago rate. Other points, such as Peoria, Indianapolis, and the like, take certain other percentages of the Chicago rate. So that the fact that rates between New York and Chicago have remained continuously the same during that period also shows that the rates from New York to these other points have remained substantially the same; and this reduction in the average rate per ton per mile has come about largely in consequence of the preponderance of low-grade traffic.

The rate per ton per mile in force on railroads in Europe has been cited as being so much higher than the rate per ton per mile in this country. The reason for that is very largely that the high-class freight is carried in Europe and Great Britain wholly or almost wholly by the railroads; while, on the other hand, the low-class freight has been carried almost entirely by canals and rivers—by water transportation. So that the figures producing the average rate per ton per mile do not include the low-grade freight which constitutes the great bulk of the traffic of this country.

To confirm this statement, I wish to refer to the statement made by Mr. Meyer, in which he says that the railroads of Germany have played no part in the development in manufacturing and in industry. That is undoubtedly the case, because the raw material for manufacturing and industry is very largely or wholly transported by canal or river, by water transportation. It has been carried on entirely by the rivers and canals, as he himself states. Those were his words—that the manufacturing industries have been carried on entirely by rivers and canals; and he has stated that the ton mileage by the waterways was 290,000 ton miles, and by the railways 410,000 ton miles, in 1875.

Senator NEWLANDS. Is that of all Europe?

Mr. BACON. This is of Germany. That shows that the water transportation in Germany was one-third greater than the rail transportation; and that transportation consisted almost wholly of these low-grade products, these products which take the lowest rates of freight. Then he brings it up to 1900 and says that the waterways carried 1,150,000 ton miles as against 740,000 ton miles by railway. The waterways carried in this case 50 per cent more than the railways; they not only carried an equal amount with the railways, but 50 per cent more.

Senator NEWLANDS. If you added the tonnage rate by water to the tonnage rate by rail and divided it by 2, would it be your contention that the amount per ton per mile would be less than in this country by rail?

Mr. BACON. It is presumable that that would be the case, but I can not say so positively, not having the figures at hand. But take

three-fifths of the traffic on railroads in this country (as is the case in this statement of 1900) and carry it by water, by canal, or by river, if it were possible that we had the facilities for doing it, and you would find that the average rate per ton per mile would be probably trebled, because the railroads would then be carrying property which they get probably 5 to 6 or 7 cents per ton per mile for carrying, and they would have eliminated the property which they are carrying at a half a cent or less per ton per mile.

There can be no accurate comparison made between the rates in this country and Europe without going into the tonnage of the different classes of freight transported. I only speak of this to show how deceptive this matter of "rate per ton per mile" is.

Furthermore, take the mileage of railways in Germany as compared with the mileage of waterways in Germany: As stated by Mr. Meyer, there are 32,000 miles of railway as against 8,000 miles of waterways—the waterway mileage being a quarter of the railway mileage. In this country the waterway mileage would be a very small percentage—a very small percentage.

As you are all aware, Europe is gridironed with canals and has numerous navigable rivers that carry boats of great capacity, whereas this country has very few.

Senator KEAN. I thought we had a good many miles of navigable streams in this country.

Mr. BACON. But proportionately they are very small. To illustrate that point still further, let us take the principal railways in the State of Virginia. Those railways, as you know, are engaged very largely in the transportation of coal, and the rate per ton per mile on those railways is consequently very low. The rate on the Chesapeake and Ohio for the year ending June 30, 1903, was 4.75 mills.

Senator NEWLANDS. Is that the average on all traffic?

Mr. BACON. On all traffic on the Chesapeake and Ohio Railroad. In the year ending June 30, 1904, it was 4.7—very nearly the same both years. The rate on the Norfolk and Western in 1903 was 0.00486—that is, 4.86 mills; and in 1904 it was 0.00493—very nearly the same.

There might be predicated upon this mileage rate in Virginia the statement that the rates in Virginia were only about half what they are in other parts of this country. The average rate per ton per mile in the country as a whole is 0.76 of a cent—7½ mills, whereas in Virginia it is 4¾ mills. I only cite that as an instance to show how deceptive and illusive any statement based upon a rate per ton per mile is.

Furthermore, in Germany, in Great Britain, and in France the rates cover short distances. The short-distance rate in this country, if the rate per ton per mile were figured on distances not exceeding 500 miles——

Senator KEAN. Those are all short distances; the distances of the railways in Virginia are all short distances.

Mr. BACON. But my point is as to the rates for similar distances in this country as compared with similar distances in Germany. If the short-distance rates in this country were taken separately and compared with equal distances in Germany or in Great Britain it would probably be found that they showed very little difference on the classes of freight which they carried.

The CHAIRMAN. Will you state again what you said about the average rates? You said they were less than the average rate per ton per mile in the whole United States?

Mr. BACON. Only about two-thirds; about two-thirds the average rate per ton per mile.

The CHAIRMAN. I did not quite catch what these rates apply to in the State of Virginia.

Mr. BACON. The entire traffic of these two railroads, the Chesapeake and Ohio and the Norfolk and Western, which are situated principally in Virginia.

Senator KEAN. A very large percentage of their traffic is coal?

Mr. BACON. That is it exactly.

The CHAIRMAN. You say they haul for 4 mills a ton a mile?

Mr. BACON. Four and three-fourths mills is about the average.

The CHAIRMAN. That is the average on all traffic?

Mr. BACON. That is the average on all traffic on those two lines of railroads.

The CHAIRMAN. Yes.

Mr. BACON. And their lines lie in Virginia, principally, although they extend beyond.

The CHAIRMAN. Yes; I understand. I did not quite catch that before.

Mr. BACON. My point is simply that we know very well that the specific rates in Virginia are just as high as the specific rates in New York; if anything, they are higher.

The CHAIRMAN. Right on that subject: Three-fourths or perhaps two-thirds of all this traffic is coal?

Mr. BACON. That is the very reason of this low rate.

The CHAIRMAN. Yes.

Mr. BACON. And that is why I say that the rate per ton per mile is deceptive—because this low rate is produced by low-class freights; and it is the same in the case of the other railroads of the United States. These railroads carry low-class freights, whereas in Germany and other parts of Europe the low-class freights are carried by water almost entirely.

Then as to the point that the short-distance rate is higher than the long-distance rate: Our rates in this country are based on an average probably of a thousand miles, whereas in Germany and Great Britain they will not exceed 500, and perhaps run down as low as 300. If you took those 300 to 500 mile rates in Great Britain and Germany and compared them with the 300 to 500 mile rates in this country it is doubtful whether any material difference would appear.

Another point in connection with the transportation in Europe is that that transportation includes the delivery of the property by team at both ends of the route. The railways keep teams employed in receiving the property and loading it up into the cars, and taking it at its point of destination and delivering it at the merchants' stores, or wherever the place of delivery may be. Now, the cost of teaming at the two termini will be equal in many cases to the cost of transportation for two or three hundred miles, perhaps 500 miles. So that there are elements that enter into the average rate per ton per mile in Europe which do not enter at all into the average rate per ton per mile in this country.

I state this to show that the idea that the rates in this country have been constantly declining is an erroneous one. The specific rates have not declined, except in rare instances; and as a matter of fact during the past five years there has been a continuous advance in rates, first on one set of commodities, then on another, and then on another.

Senator NEWLANDS. You call these rates "specific rates." How do you distinguish between them?

Mr. BACON. When I say a specific rate, I mean this: For instance, we will say the first-class rate from New York to Chicago is 75 cents a hundred, and the second-class rate is 60. I am not sure whether that is correct or not.

Senator NEWLANDS. Those you call specific rates?

Mr. BACON. Those I call specific rates.

Senator NEWLANDS. What other rates are there?

Mr. BACON. Specific rates are the rates on a given class of property between two given points. Those I call specific rates. But when you take all the traffic of a certain railroad, including all classes of property and all distances it is transported, and figure out the average rate per ton per mile, it is an utterly useless figure. I am unable to discover why railroad companies continue to work that out. It is done with a great deal of labor, and involves a great deal of expense; and what the utility of it is I have been absolutely unable to discover, unless it is to make some——

Senator DOLLIVER. They say that that is the basis of their rates; that they are selling transportation at so much per ton per mile.

Mr. BACON. But their rates are not based on so much per ton per mile at all. They are based upon what each commodity will properly pay—the common expression is, what it will bear. That expression is properly applicable to railway transportation; it is applicable to railway transportation both ways. It may be as high as it will bear, and it may be as low as it will bear. Certain articles will bear a high rate of freight, and certain other articles will bear only a low rate of freight; and it is the traffic manager's duty to find out how much the high-class will bear and how little the low class will bear, so that he can have the transportation of both.

But the use of the figures of the average rate per ton per mile is perfectly illusive. No deduction that I have been able to discover can be made reliably from the average rate per ton per mile.

It has been disputed and denied, in fact, that the rates have been increased during the past few years, and it has been asserted that they have been steadily decreasing instead. I have taken from the statistical report of the Interstate Commerce Commission the gross earnings per mile of railway in the United States in the period between the years 1899 and 1904. There is nothing that is a more sure guide to the earnings of a railroad than the amount obtained per mile for its traffic. That embraces all kind of freight, and it brings it down to a revenue per mile which eliminates from the question the matter of increase of mileage.

The revenue per mile in 1904 on freight, taking all the railroads of this country, is reported as $6,592. In 1899 it was $4,895. (I have taken that year because that is the year in which the general advance to which I refer was commenced. It was commenced January 1,

1900; but the fiscal year of the statistics of the Interstate Commerce Commission ends with June 30, so to get back of where the advance in rates commences it is necessary to take the year ending June 30, 1899.) The revenue per mile of freight earnings in 1899 was $4,895. That is an increase of 34.7 per cent in the freight earnings per mile of all the railroads of the country.

That has come partly from increase in traffic, increase in tonnage, and partly from increase in rates. To ascertain just how much comes from each is an absolute impossibility; but I have found that the increase in aggregate tonnage during that period, taking all the railroads in the country, was 10.9 per cent. The increase in tonnage is 10.9, we will say 11 cents——

Senator CLAPP. Eleven per cent.

Mr. BACON. Eleven per cent; and the increase in the mileage earnings is 34.7 per cent. Now, the natural deduction from that is that the greater part of the increase in the earnings per mile has come from increase in rates.

Senator DOLLIVER. Is that a net increase in mile earnings?

Mr. BACON. The increase in mileage has nothing whatever to do with it, because this is——

Senator DOLLIVER. I say, is it a net increase in the earnings per mile?

Mr. BACON. No; this is the gross freight earnings per mile. Then, again, I have taken the gross earnings, including freight and passengers, and I find that between 1899 and 1904 the increase is 34.3—very nearly the same as in freight earnings alone.

Senator NEWLANDS. Thirty-four and three-tenths per cent?

Mr. BACON. Thirty-four and three-tenths—yes; and the increase in freight earnings being 34.7 per cent, it is substantially the same. Substantially the same increase appears in passenger earnings per mile as in freight earnings per mile.

I have also taken the net earnings, including freight and passengers, after deducting operating expenses, and they show an increase of 24.6 per cent during that period of five years.

Senator KEAN. Do they show how much capital has been put in during that time?

Mr. BACON. The capital put in has no bearing whatever upon this computation, because this is based on a single mile; it is the earnings per mile of railroad during each of those years.

Senator KEAN. Take the mileage of the Pennsylvania Railroad across the State of New Jersey in the last five years; take what it cost originally and take what it costs now; how much money do you suppose has been spent on it?

Mr. BACON. I do not think that has anything——

Senator KEAN. The same mileage is there.

Mr. BACON. It does not appear to me to have any bearing on this question of the increase in rates.

Senator KEAN. I presume it has the same bearing on that that it has on any subject.

Senator NEWLANDS. Do I understand you to say that the tonnage in the last five years had increased only 11 per cent?

Mr. BACON. Only 11 per cent, sir.

Senator NEWLANDS. The statement of Mr. Morawetz was that in

the next seven years they expected the tonnage of the country to double.

Mr. BACON. Well, sir, these figures are taken from the annual reports of the statistical department of the Interstate Commerce Commission, and are accessible to anybody and everybody. The actual increase in tonnage during the period was 10.9 per cent, whereas the increase per mile of earnings of freight was 34.7 per cent and the net earnings 24.6 per cent.

The CHAIRMAN. Per cent?

Mr. BACON. Per cent; yes.

In order to test this year 1899 with other years to ascertain whether or not 1899 was an exceedingly low year, I went back to 1897, and the difference is very much greater from 1897 to 1904 than it is from 1899 to 1904, being 55 per cent instead of 34 per cent—that is, 1899 is a good average year with which to make the comparison. The year 1897 was a poor year—a bad year in railroading—and the increase in freight earnings from 1897 is 55 per cent per mile, so that the year 1899 is a very fair one with which to make the comparison.

Senator NEWLANDS. Have you the increase in tonnage as between those dates?

Mr. BACON. I have not the figures of the increase in tonnage, but I have calculated it and found it to be 10.9 per cent.

Another point bearing upon the increase——

Senator NEWLANDS. Let me ask you this question right there: Did I understand you to say that between 1899 and 1904 the increase in tonnage was 11 per cent?

Mr. BACON. Yes; 10.9 per cent, and I call it 11.

Senator NEWLANDS. Very well. Now, have you the increase in tonnage between 1897 and 1904?

Mr. BACON. I have not that; no. I have not that.

Senator NEWLANDS. Oh, I see.

Mr. BACON. I made this other comparison between 1897 and 1899 to show that 1899 was not a low year; that it was an average business year—a year of good business.

Further, on the matter of increase in rates, I find that in the Interstate Commerce Commission's report for 1903 it is stated that the class rates from St. Louis and kindred points (as it is expressed) to the Southwest are higher to-day than they were in 1887. That takes in the southwestern territory there, from St. Louis and other Mississippi River points to points in the Southwest. And I recall that Mr. Cowan, who presented the matter of the increase in rates on cattle to this committee during its sessions last winter, showed that the increase in cattle rates during the period of five years had been 33 per cent. He stated the various rates that had been in force—that were in force five years ago—and those in force at that time. Taking the whole southwestern territory, and a number of the extreme Western States also, he showed by comparison with figures that there was a general average increase of 33 per cent.

The CHAIRMAN. Where do you get these figures from?

Mr. BACON. From what is called the statistical report of the Interstate Commerce Commission, which is issued annually.

The CHAIRMAN. Do you get these various advances and reductions from them in their reports, set up in detail in their reports, or did you make the calculations yourself?

Mr. BACON. The figures are stated in those reports, and I put the figures together and make the deductions from them.

The CHAIRMAN. Yes.

Mr. BACON. The Commission does not seem to consider it its duty to draw deductions, but simply to give facts—the figures.

It is this continuous increase in rates of freight that has produced this excitement (as Senator Cullom has termed it) in relation to the regulation of railway rates by some body of the Government—this increase that has been steadily going on during the past five years, and has been going on in spite of the fact that the average rate per ton per mile has shown continuous reductions until within the last year. The last year showed a very slight increase in the average rate per ton per mile.

Senator NEWLANDS. Of course, during this time there has been an increase in the operating expenses, has there not?

Mr. BACON. To be sure, there has been a large increase; but, as you will observe, I have taken net earnings. I have shown the increase in the net earnings during this period of five years to be 24.6 per cent. The increase in net earnings from 1897 to the present time is 50.5 per cent. That is the increase in net earnings from 1897, which was a poor year, as I have said before.

Senator KEAN. How many miles of railway in the United States were in the hands of receivers in 1897?

Mr. BACON. Well, not many. There were prior to that.

Senator KEAN. They were just coming out in 1897, were they not?

Mr. BACON. Yes; but the cause of those receiverships, as you are probably aware, was not that the earnings were insufficient, but that there had been an undue overcapitalization in the building of the roads. Those that had loaded themselves with capitalization to such an extent that could not pay any dividends and could not pay the interest on their bonds had to go into the hands of a receiver and liquidate and go into other hands that could reduce the capitalization to a point where dividends could be paid upon it.

In this connection I want to show the workings of railroad operations during that period, or substantially that period. I have taken the four years ending June 30, 1903, and I find that the surplus accumulated by the railroads of the United States during that period, over and above the fixed charges and the dividends and taxes paid by them, amounted to $358,440,000—that is, after paying the interest on their bonds, their taxes, and the dividends which they have declared there was remaining a surplus each year ranging between $80,000,000 and $100,000,000 each year, aggregating in the four years $358,440,000. There was expended for permanent improvements during that period, not included in operating expenses, $92,500,000. In that connection I will say that many railroads include their improvements and extensions to a large extent in their operating expenses. Some roads do and some do not; but the Commission shows that the amounts invested in permanent improvements, outside of the operating expenses, during that period, aggregate $92,500,000. That, added to the surplus accumulated, makes an aggregate of $450,940,000 actually laid aside by the corporations, either in cash or in improvements made in their property during that period of four years, after having paid their interest and their dividends.

It is a question if, under such a practice as that, it is not the duty

gress to step in and provide some regulating process by which re rates which produce such results as these can be checked, kept under control, and the people be protected from the im- ı of such rates as will produce such revenues.

CHAIRMAN. Do you claim that these rates were excessive as se of the advance?

BACON. In consequence of the advance?

CHAIRMAN. Yes. Does that make them necessarily excessive?

BACON. Oh, a rate may require to be advanced from condi- ıd circumstances existing at the time.

CHAIRMAN. Yes; but do you attribute the general advance u claim in rates to excessive rates, unreasonably high rates?

BACON. This surplus of which I speak has evidently or un- lly arisen to a very large extent from the increase in tariff It has partly arisen from increase in traffic; but with in- in traffic there ought to be reduction in rates instead of an s in them. Although the expense of operation has increased, ıot increased in proportion to the increase in tonnage.

CHAIRMAN. But because a railroad has a surplus, does that hat it is because the rates have advanced? Might it not be other causes?

BACON. Why, it seems to me that it argues that advances have ade which were unnecessary; they would have derived suffi- ıvenue without having made the advances.

tor DOLLIVER. Is this statement by the Interstate Commerce ssion of the increase in tonnage since the hard times one that ieve to be correct?

BACON. I have no doubt of it whatever; because the figures le up by the auditing department of the Interstate Commerce ssion from year to year, and are published and scattered broad- er the land. I have never seen their accuracy questioned in pect whatever.

tor DOLLIVER. It simply seems a little unreasonable to me. I pretend to criticise the statement, however.

BACON. Well, understand me; I do not go back to the period ression in 1897; I only go back to 1899, when the advance in ommenced.

tor NEWLANDS. But that would be at the rate of only 2 per r annum; and Mr. Morawetz was estimating upon an increase the next seven years of at least 17 or 18 per cent per annum.

BACON. He was making an estimate on the increase in earn- robably, rather than an increase in tonnage.

tor NEWLANDS. No; he was speaking of an increase in tonnage. imated that if the present rate of increase went on, and in- as it would be expected to increase, within seven years the ds of the country would be hauling twice as many tons per they are hauling now.

BACON. Then, these figures show that he was evidently mis- if they are correct; and there is no reason to question their y.

tor NEWLANDS. That statement struck me as quite a remarkable could not see how the tonnage of the country could increase h in such a short time; but I must say that your statement be equally remarkable the other way.

Mr. BACON. I have verified it. I have not made the figures at haphazard, but I have gone over the reports carefully, and have gone over them again and again, really, to be sure they are correct.

Senator NEWLANDS. Under your estimate the increase in tonnage would hardly keep pace with the percentage of increase in population. The percentage of increase in population of this country, I believe, is about 3 per cent per annum.

Mr. BACON. Yes. Well, I should not think they would vary greatly from each other—that the traffic would increase in about the same proportion as the population.

Senator NEWLANDS. Right there, upon the point of that surplus of which you speak, which seems a very large one, and which you stated had been put into betterments and improvements—do you understand that the railroads expect to issue bonds and stock in the future against such moneys put into improvements and betterments?

Mr. BACON. The process has been, heretofore, to issue stock dividends to cover those improvements.

Senator NEWLANDS. Yes; so that in that way they are turned into capital upon which interest is expected to be earned?.

Mr. BACON. Yes, sir; they are turned into capital, after having been derived from the public for the service of transportation, and then subsequently converted into new capital on which the public is to pay dividends.

Senator NEWLANDS. That would seem to be unfair, provided the dividends that were paid were reasonable. Now, have not the dividends of these roads during the past few years been very low, and in some cases have not the roads gone entirely without dividends in order to permit them to spend part of their income in betterments and extensions?

Mr. BACON. That has been the case with the Southern Pacific. It has not paid any dividends for eight or ten years, if not longer than that. But it has earned, according to the figures, 5, 6, and 7 per cent per annum and has expended it wholly in permanent improvements upon its road. The effect of that has been, of course, to increase the value of its stock in the market; but instead of dividing it, it has used it in these permanent improvements.

Senator NEWLANDS. As to the Southern Pacific, whilst it has put these large amounts into betterments and improvements instead of paying any dividends, I do not understand that it has issued new stock and bonds on the improvements thus made.

Mr. BACON. It has not; but whether it will in the future or not——

Senator NEWLANDS. Do you know whether it is contemplated?

Mr. BACON. Whether it will be done in the future nobody can tell.

Senator NEWLANDS. There would be nothing to prevent it, in other words?

Mr. BACON. Nothing to prevent it; no, sir. And there have been numerous cases during the past ten years when that has been done—when stock dividends have been made by the various companies and an increase in their stock produced in that way.

Senator NEWLANDS. Upon that question of the reasonableness of the dividends. Last year, I believe, the dividends declared amounted to about $160,000,000, did they not?

Mr. BACON. I believe thereabouts.

Senator NEWLANDS. The total market value of the stock of the com-

panies in the country is about $4,000,000,000, the bonds being about $6,000,000,000?

Mr. BACON. It is about $6,000,000,000.

Senator NEWLANDS. Is that the market value, in your judgment?

Mr. BACON. Oh, I mean the face value.

Senator NEWLANDS. The face value would be $6,000,000,000, and the market value, I believe, $4,000,000,000?

Mr. BACON. I think the market value has been stated as four billions.

Senator NEWLANDS. One hundred and sixty million dollars, then, would be 4 per cent on four billions and between 3 and 4 per cent upon $6,000,000,000?

Mr. BACON. I will say, right in this connection, that there has been a great amount of increased capitalization of the railroads during the past four or five years. I have the figures of a few of them with me, to which I will briefly refer. But before taking them up I will call attention to the fact that in the case of a number of railroads that have changed hands during the past five years they have changed hands upon the basis of a large increase of capitalization.

Take, for instance, the Northern Securities Company. When that company was formed the stock of one company was put in at 115. That was the Northern Pacific. The stock of the Great Northern was put in at 180, and the stock of the Chicago, Burlington and Quincy Railroad was put in at 200—which, however, was represented by an issue of bonds. There is an increase of capitalization of perhaps an average of about 50 per cent, on which there will be a continuous effort made to obtain dividends. To be sure, the Northern Securities Company has been dissolved, but the stock of the Northern Securities Company is going to be or is to be distributed back. It has been ordered by the courts to be distributed back in proportion to the original stock of the several companies; so that the increase made in the stock is to be continued in that way. The effect of it will be precisely the same as though the merger had not been declared unlawful.

Senator NEWLANDS. Do you mean to say that an increased number of shares is distributed to the people who originally put their stock in the Northern Securities Company?

Mr. BACON. It will be redistributed back in the same proportion in which it was originally put in; but it was put in on the basis of 115, 180, and 200.

Senator NEWLANDS. Then that would mean that each one of the constituent companies would have to increase its capital stock, would it not, in order to provide for this additional value?

Senator KEAN. And they have not done so.

Mr. BACON. I suppose that would be necessary.

Senator KEAN. They have not done so.

Mr. BACON. It has not yet been done, but it is to be done.

Senator KEAN. The stock has been distributed back.

Mr. BACON. It has been ordered distributed back.

Senator KEAN. It has been distributed to a great many holders, and dividends paid on it, too.

Senator NEWLANDS. And only the original amount issued?

Senator KEAN. That is all.

Senator NEWLANDS. That was my impression.

Senator KEAN. They got back a stub for the balance of the Northern Securities stock.

Senator NEWLANDS. What did that stub entitle them to?

Senator KEAN. To whatever other securities the Northern Securities Company had, outside of the stock of the Northern Pacific and the Great Northern road.

Mr. BACON. The Chicago, Rock Island and Pacific Railroad has undergone a similar process of increase of capitalization during the past two or three years. In 1901 its capitalization was $118,000,000. It is now $209,000,000.

Senator NEWLANDS. What company is that?

Mr. BACON. The Chicago, Rock Island and Pacific.

Senator KEAN. As to another statement you made, Mr. Bacon, in regard to the bonds of the Burlington road—the Northern Securities Company did not take the stock of the Burlington road. The stock of the Burlington road was bought jointly by the Northern Pacific and the Great Northern roads, and they issued a joint bond to pay for it.

Mr. BACON. At 200 for 100.

Senator KEAN. They bought the stock of the Chicago, Burlington and Quincy for 200, and they issued a 4 per cent bond against it.

Mr. BACON. For an equal amount.

Senator KEAN. For an equal amount. The Burlington road was paying 8 per cent dividends.

Mr. BACON. That is the same thing as I stated.

Senator NEWLANDS. What was the market value of the Burlington road bonds?

Senator KEAN. About 180—something of that kind. They were paying 8 per cent.

Mr. BACON. The increase in the Chicago, Rock Island and Pacific stock is nearly 100 per cent. It includes some additional mileage; I am not sure just how much, but a comparatively small amount.

Senator NEWLANDS. Right there, Mr. Bacon, let me ask this question: Did the increase in capitalization do anything more than represent the increase in the market value of that stock above the par value?

Mr. BACON. To be sure; it produced that additional amount of stock afloat in the hands of the public on which dividends are to be earned, or expected.

Senator NEWLANDS. Yes; but of course in the case of the Chicago, Burlington and Quincy Senator Kean says that the stock was selling in the market at 180.

Mr. BACON. Yes, sir.

Senator NEWLANDS. You would expect these two companies, when they issued bonds to pay for that stock, to at least issue $180 of par value for every share, would you not?

Mr. BACON. They did issue $200.

Senator NEWLANDS. Yes, sir. That makes the water, then, only $20 per share in that case, and not $100?

Mr. BACON. It should not properly be denominated "water," perhaps; but——

Senator NEWLANDS. Well, the overcapitalization?

Mr. BACON. It is the increased earning capacity represented by those bonds. The profits of the railroads enabled them to sell those bonds in the market at $180; and in making this consolidation the purchasing parties were willing to pay $200, and did pay it, and issued bonds in place of it for that amount. The same thing occurred with the——

The CHAIRMAN. Proceed with your statement, Mr. Bacon.

Mr. BACON. I was going to speak of the Lake Shore and Michigan Southern, which three or four years ago was sold to the New York Central on the basis of $200 a share for a share of $100. That produced precisely the same result. It made double the amount of capitalization, on which the public is expected to pay dividends. These processes are going on continually; and they show the necessity of placing a restriction somewhere, so that the public may not be assessed in freight charges or in passenger rates a sufficient amount to pay interest on this increased valuation.

The Chicago and Alton Railroad went through a similar operation about three years ago, by which the railroad was bought for a certain amount—$44,000,000, I believe—and stock and bonds were issued by the new organization to the amount of ninety-odd millions. To be sure, those stocks sold in the market at a low figure at the time. They have been advancing since, because the company has been able to pay dividends upon them.

Senator CULLOM. What is the new organization?

Mr. BACON. It is under the same name, but it went into new hands.

Senator CULLOM. Who were the new hands?

Mr. BACON. It is part of the Harriman interests, I believe.

The St. Louis and San Francisco Railroad is another instance. In 1901 its capitalization was a little over $96,000,000, and in 1904 it was nearly $144,000,000. It includes the acquisition of some additional property, but it is very small as compared with the increase in capitalization.

Senator CULLOM. You think there ought to be some restriction upon the amount of capital or stock issued, do you not?

Mr. BACON. How is that?

Senator CULLOM. You think there ought to be some restriction in law as to the amount of capital or stock issued in the construction of railroads?

Mr. BACON. I do not look so much to a restriction in law on the capitalization as I do to a restriction upon the earnings, so that the people will not be assessed for the transportation service an amount sufficient to pay the interest on all this excessive capitalization. Commence at the bottom. See that the rates are no higher than they should be and that the public is protected against the imposition of rates that will pay dividends upon operations of this kind.

Senator NEWLANDS. But these securities get into the hands of the general public, do they not, and then they are made the basis of a claim that the rates should be so adjusted as to yield an income upon them?

Mr. BACON. Certainly; certainly. With the increase in capitalization there must be rates made that will produce these dividends; and when these dividends are produced the market value of the properties is increased; and then comes the demand again to increase the

rates, and then again to increase the capitalization—a continually increasing ratio of demands upon the people to pay returns upon the investments that will somewhere approach their face value.

The CHAIRMAN. Proceed with your statement.

Mr. BACON. In that conection I will say that during the past two or three years—I will say five years—there has been developed a new commercial industry. That is the buying and selling of railroads. A large number of railroads have been bought at a high price, at a much higher price per share than the stock is selling for on the market, for the purpose of getting them into the possession of certain parties who believe when they get possession of them they will be able to levy rates of freight and passenger traffic upon the people that will enable them to pay a profit on the advanced price they have paid for them, and perhaps some day to resell them at another advanced price to some other organization.

I want to spend a few minutes on the statement made by Mr. Meyer to the effect that the Interstate Commerce Commission has taken the ground in its decisions that the geographical advantages of any particular community should not be interfered with, and, on the other hand, that the disadvantages of any particular community should not be remedied by the Commission in its operations in the decision of these cases in relation to rates.

His statement is correct that the Commission has taken that ground. He objects to that ground being taken by the Commission or by any rate-regulating power. I submit to the committee whether in its opinion it would be just and right for any commission or any governmental regulating power to undertake to divest any locality of an advantage which accrues to it from its geographical position, or from an expenditure that that locality may have made to increase its facilities for the handling of property. It seems to me to be beyond question that those advantages should be recognized—that the natural advantages that accrue to a certain locality and the advantages which a certain locality has provided for itself in the increase of its facilities should be recognized by any authority that has control over rates. Mr. Meyer takes the ground that all localities should be equalized in respect to one another, and that a locality which is naturally under a disadvantage should have that disadvantage removed by governmental regulation, thus placing them all upon an equality. It seems to me that that is an utterably untenable position.

The CHAIRMAN. You say that is the position of Professor Meyer?

Mr. BACON. That was the position that he took, clearly, in speaking of the railways in Germany. He says that the effort is in Germany to proceed upon that policy, and that the Government finds difficulty in carrying it out on account of sectional demands and sectional differences. But it seems to me to be a perfectly clear proposition that every locality that has natural advantages is entitled to the benefit of those advantages in its transportation facilities. That course has been pursued in this country uniformly from the time of the establishment of the Commission to the present time, and very properly, and nobody has made any objection to it or found any fault with it, with the exception of perhaps a few localities that are under a natural disadvantage, that feel that they ought to be relieved of those disadvantages by the Commission. But the Com-

mission has uniformly refused to grant any relief from natural disadvantages.

Take the transcontinental traffic. The rates from the Atlantic to the Pacific coast are regulated by water competition and are necessarily very much lower than rates for half the distance. Numerous cases have been brought before the Commission by localities part way across the continent to be relieved of that difference which the waterways have given the Pacific coast the advantage of, and the Commission has refused to do so.

Senator CULLOM. That involves the long and short haul question, does it not?

Mr. BACON. It involves that question, but the Commission has in all its decisions taken the ground that water competition justifies a departure from the long and short haul provision of the interstate-commerce act; and very properly so. The Pacific coast is now under a good deal of consternation in view of the effort to secure this legislation, lest it be deprived of that natural advantage by the work of the Commission. But the course of the Commission heretofore shows clearly that it has no reason for any such apprehension.

Senator KEAN. You say the Pacific coast has protested against this legislation?

Mr. BACON. I was going to say that it has sent in numerous protests against the legislation under that misapprehension, as I am informed by officers of commercial organizations on the Pacific coast, under the instigation of the railway companies, chiefly the Southern Pacific, and the Atchison, Topeka and Santa Fe. They have made strenuous efforts to obtain action on the part of commercial organizations in that section to remonstrate against this legislation, trying to convey to them or in fact conveying to them the idea that if the Commission has the control of those rates, has power to change these rates on complaint if found unreasonable, the Pacific coast will be deprived of the advantage which it has heretofore enjoyed. But that is shown to be utterly baseless from the decisions that have been made by the Commission.

I had occasion not long ago to go over a number of its decisions, to tabulate them, synopsize them, and publish them, for the purpose of showing to commercial organizations that were so situated, that had natural advantages which they were enjoying the benefit of, that the Commission would maintain those advantages if it had the power to order changes in rates. So that the protests that have come from the Pacific coast against this legislation have come entirely under that misapprehension.

Senator CULLOM. You say some organizations are taking steps to counteract this change?

Mr. BACON. Some on the Pacific coast—yes. Two or three of the San Francisco organizations have taken direct action, and in fact have presented resolutions to this committee during the last session of Congress, remonstrating against this legislation, for fear that it would interfere with the natural advantages which they possess.

Senator CULLOM. I thought you said that since that these organizations are changing back again, and are willing to let this legislation go on.

Mr. BACON. Probably nine-tenths of the commercial organizations

of the Pacific coast are as strenuous in the advocacy of this legislation as any organizations in the country.

Senator CULLOM. You mean by "this legislation" giving the Commission power to make rates?

Mr. BACON. Giving the Commission this power. There are some forty-odd commercial organizations in California that are associated in this movement represented by the committee of which I am chairman; and they are as persistent in their desire for legislation as they ever have been, although the railroad people have endeavored to imbue their minds with the idea that they might be deprived of their present advantages.

Senator DOLLIVER. Is there any more glaring injustice in the railway situation than the case of cities like Salt Lake and the city of Spokane, Wash.? I mean, practical injustice?

Mr. BACON. Well, Senator, that is a pretty difficult question to discuss, and I would not want to go into it very much, because it will take a great deal of time. But it is very apparent that in the case of San Francisco, Los Angeles, and other places on the Pacific coast that are accessible by water all the way from the Atlantic coast, and that consequently can and do obtain rates by water that are exceedingly low, the railroads should be permitted to meet those rates.

Senator DOLLIVER. At the expense of the interior?

Mr. BACON. Well, there comes the question. If the rate to any of these intermediate points is unreasonable in itself, it should certainly be reduced; but if the rates to those points are reasonable——

Senator DOLLIVER. Do you think they never can be shown to be unreasonable?

Mr. BACON. There have been several cases brought before the Commission in which the Commission has decided that they were not unreasonable.

Senator DOLLIVER. A man in Spokane who reached the conclusion that there was no remedy for his troubles would probably lose interest in the Interstate Commerce Commission, would he not?

Mr. BACON. Those are cases each of which must be determined on its own merits. Spokane is only 300 miles east of the Pacific coast; and whether it is just or not to charge Spokane the rate to the Pacific coast, to Seattle, and back from Seattle to Spokane, is a question that some competent body should determine. That is one of the things that is included and will be included in this proposed legislation. It will invest the Commission with the power to say whether an unjust rate is or is not really charged to Spokane and to other places similarly situated.

Senator DOLLIVER. But, in your opinion, no commission would ever take that position?

Mr. BACON. In my opinion the Commission, from the fact that it never has taken that position, is not likely ever to take it.

Senator NEWLANDS. Seattle would not be content to have any change made in that rate from the present condition, would it?

Mr. BACON. Certainly not.

Senator NEWLANDS. Whereas Spokane would insist upon it?

Mr. BACON. Spokane is very desirious to obtain the same rate that Seattle has.

Senator NEWLANDS. Yes.

Mr. BACON. And if the rate which it is charged is unreasonable

in itself, then it should be reduced and would be reduced by the Commission. But if the Commission finds it to be in itself a reasonable rate, the fact that it is higher than the rate to the Pacific coast is no reason why it should be reduced. That is the ground that the Commission has taken.

Senator KEAN. It is a little like the case of Milwaukee and Minneapolis, is it not?

Mr. BACON. No; it is entirely different from those cases. The situation there is that grain originating over a certain extent of territory is carried to Minneapolis at a less difference in rates as compared with the rates to Milwaukee and Chicago than is customarily charged for corresponding distances, and that was so declared by the Commission in the case that was brought by the Milwaukee Chamber of Commerce, but the railroads refused to comply with the decision rendered by the Commission. Now, I did not intend to allude to the Milwaukee case——

Senator CULLOM. Did the case where the Commission determined the question as between your town and St. Paul go any further? Was the case appealed to the court after the Commission determined it and the railroad paid no attention to it?

Mr. BACON. It was not appealed by the Commission, for the reason that it immediately followed the decision of the Supreme Court, rendered in 1897, that the Commission had no authority to order a specific change in rates.

Inasmuch as this incident has been referred to, I want to refer to the testimony given by Mr. Hiland here a few days ago on that particular case, in which I find, from reading the report, that his memory is very greatly at fault. He states that the railroads did not comply with that decision for the reason that they found it would interfere with what he terms the correlation of rates, meaning to other places; and he said he declined to comply with the Commission's order on account of the disturbance which it would produce in those correlated rates.

Mr. Hiland at that time was general freight agent of the Chicago, Milwaukee and St. Paul Railway, of which he is now traffic manager, and was entirely familiar with the facts and had directly to do with them; but it is a considerable length of time since, and evidently the circumstances have gone out of his mind. The facts, however, are these: Before the case was brought before the Commission, the Chicago, Milwaukee and St. Paul Railway had been conferred with by representatives of the Milwaukee Chamber of Commerce during a period of two years or more, in the endeavor to obtain amicably a proper and satisfactory adjustment of rates, but without success. When the case was brought before the Commission and was decided in favor of the Milwaukee Chamber of Commerce, the St. Paul Railway Company, through Mr. Hiland, immediately prepared tariffs complying with the decision of the Interstate Commerce Commission and submitted those tariffs to the several railway companies that were interested. I believe there were six of those, besides the St. Paul road, and all of the companies with the exception of one assented to the adoption of those tariffs. That company, which was the Chicago and Northwestern, being identified with the Chicago, St. Paul, Minneapolis and Omaha road (which leads to Minneapolis and has no

other terminal of importance, which does not reach Milwaukee or Chicago on its own tracks), refused to accede to the adoption of that tariff. Under the rules of their traffic association, if one company refused to accede to the adoption of a tariff proposed it could not be adopted; or, rather, it would not be adopted.

Senator CULLOM. They attempted to put the decision in force, then?

Mr. BACON. They made the attempt to put the decision in force, and took all the necessary steps to do so, and were prevented by the dissent of this one company.

Senator KEAN. Which ran to Minneapolis.

Mr. BACON. My point is that if it had been impossible to adjust those rates without disturbing other correlated rates to an intolerable extent, the St. Paul Company would not have taken those steps. But it did take those steps, and took them in good faith, and with the intention of carrying them out.

After the matter had been submitted to the railways interested, and the companies had refused to put it into effect, the St. Paul Company took the matter up independently of those companies; and the manager or president of that road, Mr. Earling, at that point, in my presence, directed Mr. Hiland to put those tariffs into effect notwithstanding the refusal of this one road to abide by the order. It not only took steps to adjust its rates to comply with the ruling of the Commission, but went so far after the various companies interested had refused to adopt the tariff by the veto of the Northwestern Road as to order the rates to be put into effect.

Mr. Bird, who was then traffic manager, was absent at that time on a vacation. He returned in three or four days; and upon his return it was decided, for some reason (whatever it may have been), that they would not put that tariff into effect.

I simply refer to that to show that the statement that it was impracticable to put it into effect owing to the disturbance produced in relation to other rates was not correct, and it was not a leading motive in this matter; but, on the contrary, the St. Paul Company was disposed and ready to do it.

Senator KEAN. The St. Paul Company would have reduced the rate to Milwaukee; but the other roads, if they had reduced the rate to Milwaukee, would also have reduced the rate to Minneapolis, would they not?

Mr. BACON. This was an arrangement between the roads interested in all three of the markets; and all the roads, with the exception of the Omaha road, assented to the adoption of the rates to comply with the decision of the Commission.

Senator KEAN. And they had no market in Milwaukee?

Mr. BACON. Not over their own tracks. They connected with the Northwestern, and those two lines were largely in common interest. But I speak of this to show that the general statement can readily be made that rates can not be adjusted without such a disturbance as to render it impracticable to put proper and just rates into effect.

Senator KEAN. If those rates had gone into effect there would not have been any of this agitation, would there?

Mr. BACON. I do not think this agitation is dependent upon those rates; but I will say this—that the futility of the Interstate Commerce Commission, which was demonstrated by that case, led me to

take an interest in an effort to confer power somewhere that might remedy injustices of that kind.

Senator KEAN. Was that a unanimous opinion by the Interstate Commerce Commission?

Mr. BACON. Yes, sir; but I do not think that point has any bearing. As far as my observation goes, the decisions of the Supreme Court on important questions have generally been determined by a majority of one, by a vote of 5 to 4. In all cases of any importance that have come up, to my knowledge, as a layman, I have observed that to be the case.

The fact of this one road refusing to put in the rate was not on the ground of its injustice, but simply on the ground that it might deprive that road of some share of the business it had been receiving. And I put the question to the traffic manager of that road whether he was prepared—because it might have that effect—to prevent the putting into effect of rates that had been found by the Commission to be just and right, and that were acknowledged by all of the other companies in interest to be so. He merely replied that he would not accede to anything that would interfere with the interests of Minneapolis, and that he feared this would.

(At this point the statement of Mr. Bacon was suspended in order to permit brief statements to be made by a number of gentlemen who wished to leave town, it being understood that Mr. Bacon should be allowed to continue his statement in the morning.)

STATEMENT OF MR. OLIVER S. GARRISON.

The CHAIRMAN. Please state your name, occupation, and residence.

Mr. GARRISON. My name is Oliver S. Garrison; residence, St. Louis; president of the Big Muddy Coal and Iron Company, and chairman of the Illinois Coal Operatives' Association, an association composed of nearly all the operatives of the State of Illinois, and representing 90 per cent of the tonnage of the State.

The CHAIRMAN. What is the aggregate shipment, in tons, of this association and these companies you are connected with?

Mr. GARRISON. The Illinois Coal Operatives' Association represents about 34,000,000 tons of coal.

The CHAIRMAN. They ship that much?

Mr. GARRISON. They ship that much; yes.

The CHAIRMAN. And how much do the others ship?

Mr. GARRISON. The Big Muddy Coal and Iron Company, the company I am directly identified with as president, ships about 1,000,000 tons.

The CHAIRMAN. Now make your statement, as briefly as you can.

Mr. GARRISON. As I recall the President's message, it referred to some railroad legislation, one of the subjects being rebates, the other fixing of rates by a commission.

As regards the rebate question, I supposed that that was a matter of the past, as I do not know of any parties who have enjoyed any special privileges since the passage of the Elkins law.

Senator KEAN. Did you know of any before?

Mr. GARRISON. I heard of them; I do not know that I can mention any cases.

Senator KEAN. Do you know of any?

Mr. GARRISON. I believe that numerous complaints in regard to that existed before the passage of the Elkins law.

Our business covers the territory from New Orleans to Minnesota and Dakota, the North and Northwest, and if there were any rebates being offered at this time, or obtainable at this time, I think our company would be in a position to secure them, or, in other words, I think the railroads would offer all the inducements that others might receive.

Now, as to fixing the rates by a commission, I feel that the present rate situation is very satisfactory, so far as our part of the country is concerned, and I am speaking to that. The rates have been gradually reduced, until to-day we enjoy about what is considered fair rates. To disturb the present situation would, in my opinion, be a serious matter to the commercial interests of our country. I do not believe any body of men, who have not been trained as our traffic men have been, are able to go into the question of the railroad conditions of this country and properly deal with the different propositions that arise. Where differences have arisen it has been my experience that they could be adjusted with the freight men whenever we could convince them that our position was correct.

A further serious matter, according to my way of thinking, would be that if this fixing of rates by a commission were enforced it would have a tendency to affect the financial interests of our country to a very great extent. People will not invest their money in railroads, not only in extensions, but in the betterment of the present lines, with any doubt in their minds as to what their returns are going to be. Within the last ten or fifteen years my experience has been that our large systems have been nearly all rebuilt, that the old rails have been taken up and new and better ones substituted, and that equipment generally has been vastly improved, and I sincerely hope nothing will take place to disturb the present conditions as to freight rates.

The CHAIRMAN. What do you mean by disturbing? Do you mean changing the present method of fixing rates by the railroads and giving it to a commission?

Mr. GARRISON. Yes, Mr. Chairman; that is what I intended to state.

The CHAIRMAN. In your business and in the business in which you are associated is there any complaint of high or excessive rates anywhere?

Mr. GARRISON. Not at this time.

The CHAIRMAN. Now, as to shippers generally, so far as you know, is there complaint in your section of the country—in the Mississippi Valley—of rates being too high?

Mr. GARRISON. Mr. Chairman, when I was asked to appear before this committee I took occasion to talk with a number of our merchants and people who are largely interested in and connected with our business interests of the West, and the general expression was that they were satisfied with the rates; that all they wanted to see prevented was this rebate proposition; that if all were on the same footing they could take care of themselves. I found that sentiment to exist universally. I do not know that I met a single merchant or manufacturer who differed from that proposition.

The CHAIRMAN. Have the commercial bodies of St. Louis, or those

with which you are connected, taken any action about this rate-making power?

Mr. GARRISON. Not at the present time. I believe there was some action taken, Mr. Chairman, but I was in Europe that year.

The CHAIRMAN. You think that conferring power on a commission to fix rates or to change rates would be to reduce rates. What I mean is, would that necessarily follow that the rates would be reduced if complained of, and that if reduced that would create a doubt in the minds of proposing investors in railroad securities to any extent, or to a sufficient extent that those proposing to build railroads could not borrow the money with which to do it?

Mr. GARRISON. It is my belief, Mr. Chairman, that that would be the case, and that was the purpose I had in view in making my statement.

Senator CULLOM. Are you connected with any railroads?

Mr. GARRISON. I have no official position with any railroads. I am a director in the Missouri Pacific Railway.

Senator CULLOM. You are more connected with merchandising operations?

Mr. GARRISON. With mining coal in the Murphysboro district in Illinois.

Senator CULLOM. You do not find any fault with the conduct of the railroads, so far as you are concerned?

Mr. GARRISON. As I stated before you came in, Senator, we think the rates at the present time are fair.

Senator NEWLANDS. You say that you are not an officer of any railroad, but that you are a director in the Missouri Pacific. Are you a stockholder?

Mr. GARRISON. Yes, sir.

Senator NEWLANDS. Are you largely interested in railroads or railroad securities?

Mr. GARRISON. My holding of railroad securities is less than $20,000, and in manufacturing and other enterprises about $400,000 to $500,000.

Senator NEWLANDS. So that your interest in shipments far outweighs your interest as a railway investor?

Mr. GARRISON. Far outweighs it; yes.

Senator NEWLANDS. Your familiarity is with the rates of freight on coal, is it?

Mr. GARRISON. Mostly.

Senator NEWLANDS. Where do you ship your coal?

Mr. GARRISON. To the territory as far south as New Orleans, and to intermediate points as well as to that point; and to the north to St. Paul and Minneapolis, and some into the Dakotas, no large amounts, but we ship some into the Dakotas, and to Nebraska also.

Senator NEWLANDS. Do you find that the rates on your coal differ very largely, for the same distance, according to the direction it takes?

Mr. GARRISON. You now refer to interstate business purely?

Senator NEWLANDS. Yes.

Mr. GARRISON. We have more favorable rates for most points for interstate business than for State business, somewhat more favorable.

Senator NEWLANDS. Do you find that the rate, for instance, for the same distance south is less than it is for the same distance west?

Mr. GARRISON. Yes, sir.

Senator NEWLANDS. Is there much difference?

Mr. GARRISON. I should say offhand probably 33⅓ per cent; that may not be exactly accurate.

Senator NEWLANDS. Why is that?

Mr. GARRISON. To the south we have competition at New Orleans by water from Pittsburg, and so we are obliged to obtain rates from the railroads that will let us meet that competition. In fact, all of our business is based on competitive conditions.

Senator NEWLANDS. What is your rate per ton to New Orleans?

Mr. GARRISON. About $2 a ton to New Orleans.

Senator NEWLANDS. How many miles is that?

Mr. GARRISON. About 800 miles.

Senator NEWLANDS. Is it a distance rate?

Mr. GARRISON. No. I was figuring to see about what it was per ton per mile. I thought that was your question.

Senator NEWLANDS. What would the rate be for 800 miles to the west?

Mr. GARRISON. We have never shipped that far to the west. Therefore I can not answer that.

Senator NEWLANDS. I presume the rate would diminish very rapidly.

Mr. GARRISON. Yes, sir; the Colorado properties would take care of that business.

Senator NEWLANDS. As to preferences and rebates, have you had any familiarity with that question?

The CHAIRMAN. I think he has answered that.

Mr. GARRISON. My answer was that for the past two or three years, or since the Elkins law was passed, I know of no rebates whatever.

Senator NEWLANDS. They were very frequent before that, were they not?

Mr. GARRISON. Prior to that I heard from parties that they had had rebates.

Senator NEWLANDS. Did all the shippers seek to get them?

Mr. GARRISON. I rather think they did. I think they tried to get the best rates they could, either in the way of low rates or rebates.

Senator NEWLANDS. In order to get some advantage over their competitors the shippers did not hesitate to accept rebates?

Mr. GARRISON. I think not. I think they would take them on all occasions.

Senator NEWLANDS. And urge it?

Mr. GARRISON. Yes, sir; I think they would urge it.

Senator NEWLANDS. How were those rebates paid?

Mr. GARRISON. I want to say that personally I have never had any rebates, and so I do not know.

Senator NEWLANDS. Do you know what system prevailed? The reason I ask is because I want to know whether it would be possible for that system to be renewed.

Mr. GARRISON. I want to answer the question. I have understood it was by payment of cash instead of checks.

Senator NEWLANDS. Cash paid by the railroads?

Mr. GARRISON. Yes, sir.

Senator NEWLANDS. A return of the money?

Mr. GARRISON. A return of the money.

Senator NEWLANDS. Assume that a great railroad system were controlled by the men who are interested with you in coal mines. Do you think there is any system that could be devised that would prevent you, as shippers, from getting an advantage in the service of that road if you wanted to get the advantage?

Mr. GARRISON. As I understand your question, it refers to the fact of the coal company being jointly interested with the railroad?

Senator NEWLANDS. Yes. Suppose the producer and carrier are one, though, of course, their interests are represented by different corporations. Can any system be devised that would prevent the producer from getting an advantage if he wanted to secure it?

Mr. GARRISON. As I am not fully up in railroad accounts or their system of keeping accounts, it would be a difficult question for me to answer. I should suppose that some system could be devised, by investigation of the companies' accounts and of the coal companies' accounts.

Senator NEWLANDS. I observe that most of the railroad men who have been here before the committee have referred to this matter of rebates and discriminations as a thing of the past, and as a thing that could not possibly revive under the existing law, while others intimate that constant vigilance is required; that these rebates and preferences take varying forms all the time, and that when one form is condemned another is invented. One great railroad operator, Mr. Hill, stated that the rule on his road was that no official of the road should be interested in production anywhere along the line; and he intimated also that it would be impossible, whatever the law might be, where the producer and the carrier were practically one, to prevent that producer from getting an advantage over his competitors. I wanted your own experience in regard to that matter.

Mr. GARRISON. I want to say that I have no interest in railroad property, except the very small interest I have as a stockholder in the Missouri Pacific; but where the coal interests are closely connected with the interests of the ralroad carrying that coal, it seems to me than an examination of the books of the railroad would disclose all the facts.

Senator NEWLANDS. Then it would be necessary to have a thorough supervision, on the part of the Government, of the books of the railroad, would it not?

Mr. GARRISON. I think it would be necessary to have the right, where a question of that kind is raised, to come in and look at the books.

Senator NEWLANDS. The right to make a thorough examination.

The CHAIRMAN. You are excused, Mr. Garrison, with the thanks of the committee.

STATEMENT OF MR. A. M. AIKEN.

The CHAIRMAN. Please state your name and residence.

Mr. AIKEN. My name is A. M. Aiken; my residence is Danville, Va.

I am authorized to appear before the committee, and to present a statement of railroad conditions in the city of Danville. I have that statement in the form of a petition, and, with the permission of the committee, I would like to read it. It will take but a few minutes.

Senator KEAN. On what road is Danville?

Mr. AIKEN. On the Southern Railway.

Senator KEAN. Have you no other railroad facilities?

Mr. AIKEN. None except that and its connections; this petition refers to interstate commerce.

Senator CLAPP. Did you intend to comment upon the contents of the petition?

Mr. AIKEN. I think I should be entitled to comment upon the contents, sir.

The CHAIRMAN. You have the petition in your hand?

Mr. AIKEN. I have it before me.

Senator CULLOM. Is it signed by yourself, or by other people?

Mr. AIKEN. It is signed by the city of Danville, and presented by authority of the city of Danville.

The CHAIRMAN. By the city authorities?

Mr. AIKEN. Yes, sir.

The CHAIRMAN. It makes complaint about rates?

Mr. AIKEN. Yes, sir; as to rate conditions in that city.

The CHAIRMAN. I take it that you can make that petition a part of your remarks, and then say, aside from that, whatever you want to.

Mr. AIKEN. That is all I care to say.

Senator CLAPP. Unless you want to comment upon it, I do not see that it is necessary to read it.

Mr. AIKEN. I should like to have permission to read it.

The CHAIRMAN. We will have it before us to-morrow.

Senator NEWLANDS. How long is it?

Mr. AIKEN. Only a few pages; it will not take more than ten minutes to read it.

Senator CULLOM. I suggest that Mr. Aiken be allowed to read it.

Mr. Aiken read the petition, as follows:

DANVILLE, VA., *April 15, 1905.*

To the Senate and House of Representatives of the United States:

The petition of the city of Danville respectfully represents that it is situated in the southern part of the State of Virginia, in Pittsylvania County, on the Dan River, at a point on the Southern Railroad where the different branches of that common carrier—from Alexandria to the north, Richmond to the northeast, Norfolk to the east, and the line from the South and West—unite, and has a population of 18,000 or 20,000 inhabitants and numerous manufactories and mercantile enterprises, besides being a large market for the sale of leaf tobacco. That its principal commercial rivals are the cities of Lynchburg and Richmond, Va., the former 65 miles to the north and the latter 140 miles to the northeast of Danville.

Prior to the year 1886 petitioner enjoyed equal freight-rate advantages with the said cities of Lynchburg and Richmond through the competition of the railroad running north from Danville to Alexandria, known as the Virginia Midland Railroad, but in that year the Southern Railroad Company, then known

as the Richmond and Danville Railroad, purchased the Virginia Midland and deprived petitioner of the competing line and of its equal freight-rate advantages.

That in the year 1890 petitioner, to obtain another competing line of railroad, subscribed a large sum to the construction of a railroad from Norfolk to Danville, which road was built, but after operation for a few years as an independent line it was purchased by the said Southern Railroad Company, and since said purchase the petitioner, the city of Danville, has had no competing line of railroad, but in the matter of freight and passenger rates has been entirely subject to the will and mercy of said Southern Railroad Company.

That the said Southern Railroad Company, and its connecting railways and steamship lines engaged in interstate commerce, have by an agreement between them established in the State of Virginia certain favored points to which they deliver commodities transported by them from the several States for less rate of transportation than they demand and receive for the transportation of similar commodities under similar conditions to other points in the State of Virginia, the haul and distance to said other points being shorter than to the favored points, by which the said lines of railway and steamship lines give undue preference and advantage to the persons and localities at said favored points. Two of these favored points are the said cities of Lynchburg and Richmond; and petitioner, the city of Danville, and the said two cities have been for many years active competitors for trade in the same territory; and the territory from which petitioner, by reason of its natural and superior location in the tobacco-growing region of Virginia and North Carolina, has for more than one-half a century drawn its patronage and trade support.

Petitioner states that the said Southern Railroad and its waterway connections between Norfolk and the various cities of New England and the Middle States have established and put in force rates of transportation by which commodities and merchandise are transported by them from said northern and eastern points by way of Norfolk and Pinners Point through the city of Danville and delivered for less rates of transportation than similar commodities and merchandise from the same point over the same route are transported and delivered in the city of Danville.

To illustrate the excessive rate of discrimination against the city of Danville petitioner will state that the said carriers classify freight for transportation, and on class 1, 2, 3, 4, 5, 6, class A, B, C, D, E, F, and H, from Boston and Providence via Norfolk over the said railroad through Danville to Lynchburg, the long haul, the rate is, respectively, 54 cents, 47 cents, 38 cents, 25 cents, 22 cents, 18 cents, 18 cents, 22 cents, 18 cents, 22 cents, 36 cents, 25 cents, 45 cents, and 18 cents per hundred pounds. On the same classes from the same point to Danville, the short haul, the rate is 75 cents, 63 cents, 52 cents, 38 cents, 34 cents, 29 cents, 29 cents, 32 cents, 29 cents, 27 cents, 34 cents, 56 cents, 38 cents, 71 cents, and 26 cents per hundred pounds, making a discrimination against Danville and in favor of Lynchburg of 31 per cent, 34 per cent, 37 per cent, 52 per cent, 54 per cent, 61 per cent, 68 per cent, 45 per cent, 61 per cent, 50 per cent, 56 per cent, and 44 per cent per hundredweight on the respective classes. From New York, Philadelphia, and Baltimore over the same route substantially the same rate of discrimination is made against Danville and in favor of Lynchburg on the different classes of freight.

Corresponding rates of discrimination are also enforced against the city of Danville and in favor of the cities of Lynchburg and Richmond on all property transported by the said Southern Railroad and its connections from points south and west of Virginia, the property being carried by said railroad through the city of Danville, the short haul, to the said favored cities, the long haul. Whenever merchandise destined for Danville from points in the West and Northwest over carriers connecting with the said Southern Railroad at Lynchburg reaches Lynchburg, the said Southern Railroad takes advantage of the carrying monopoly it has over property going to Danville and adds on most unreasonable rates from Lynchburg to Danville. For example, the rate on pork and bacon from Chicago to Lynchburg is 27 cents per hundredweight, to Danville 40 cents per hundredweight. The Southern Railroad charges 13 cents per hundredweight for hauling 65 miles that which other roads charge 27 cents for hauling over 1,000 miles. The rate on refined sirup from Chicago to Lynchburg is 27 cents per hundredweight, to Danville 43 cents per hundredweight. The Southern Railroad charges 16 cents per hundredweight for hauling 65 miles for what other roads haul over 1,000 miles for 27 cents per hundredweight. A carload of matches is shipped from Detroit to Lynchburg for 24½ cents per

hundredweight. Danville is charged at 47½ cents per hundredweight. The Southern Railroad charges 23 cents for hauling 65 miles what other roads haul 600 miles for 24 cents. On all other commodities, including grain, flour, shipstuff, and other staple necessities purchased by Danville merchants in the West, as soon as they reach the Southern Railroad the same unreasonable and oppressive rates of freight are enforced against them. Thus it is shown that petitioner, the city of Danville, and its inhabitants are hedged on every side by the discriminating and unreasonable freight rates imposed by the said Southern Railroad Company and are absolutely barred from the privilege of competing with their commercial rivals for the trade of the public.

Petitioner further shows that several years ago it presented its petition and complaint, setting forth in detail the wrongs herein stated, to the Interstate Commerce Commission, and after a hearing upon evidence the Commission decided that the rates put in force against the city of Danville should cease, and at the same time prescribed what it considered a reasonable rate to Danville; but said Commission not having power to enforce its order the said Southern Railroad did not obey it, but, on the contrary, continued to demand and receive from petitioner and its inhabitants the discriminating and unreasonable rates complained of. Petitioner begs to refer to the record of the case of the city of Danville against the Southern Railroad Company, recorded in the eighth volume of the interstate-commerce cases, in support of the allegations of this petition. And petitioner further avers that the rates in force then are in force now against the city of Danville and its inhabitants. The rate from Philadelphia, New York, and other northern markets via Norfolk over the water and railway lines of the Southern Railroad through Danville to Lynchburg, the long haul, on sugar is 21½ cents per hundredweight, while the rate over the same route to Danville, the short haul, is 26½ cents per hundredweight. On leather over the said route to Lynchburg the rate is 47 cents per hundredweight, and to Danville 64 cents per hundredweight. On coffee over the same route to Lynchburg the rate is 25 cents per hundredweight, and to Danville 36 cents per hundredweight. On hardware over the same route to Lynchburg the rate is 47 cents per hundredweight, and to Danville 62 cents per hundredweight.

That from New Orleans over the lines of the Southern Railroad through Danville to Richmond and Lynchburg the rate on molasses is 26 cents, sugar 32 cents, coffee 40 cents, rice 32 cents, and on the same articles to Danville 37 cents, 63 cents, 43 cents, and 51 cents.

That from Atlanta, Ga., the rate on furniture to Lynchburg is 34 cents per hundredweight, and to Danville 64 cents per hundredweight.

That on grain from Louisville and Cincinnati over the said line through Danville to Lynchburg the rate is 12 cents per hundredweight, and to Danville 21 cents per hundredweight; on flour 12 cents per hundredweight to Lynchburg, and 24 cents per hundredweight to Danville; on meat and lard to Lynchburg 15 cents per hundredweight, and to Danville 27 cents. And that from every point in the South and West and on all commodities the rate of discrimination is of similar proportion against the city of Danville.

Besides the cities of Lynchburg and Richmond, with which Danville has traded in competition for over fifty years, the said Southern Railroad has begun to discriminate against Danville in favor of two small towns of not more than one-quarter of the population of Danville—the towns of Martinsville, 40 miles to the west, and South Boston, 30 miles to the east, where the Norfolk and Western Railroad competes with the Southern—and said Southern Railroad is now transporting commodities through Danville to both of those points at a less rate of freight than to Danville.

Petitioner in conclusion states that the wrongs and injuries complained of by which these favored cities, its nearest commercial rivals trading in the same territory to which Danville looks for trade, are given an unjust advantage of the latter, have been going on for eighteen years and until the consequence is becoming disastrous to Danville. It is depriving it of its trade, cutting down its population, increasing the cost of living to its people, diminishing the value of its real estate, and increasing the burden of taxation on its citizens, in order to meet the interest on its corporate debt and the expense of its municipal government. Petitioner asserts that new business enterprises and capitalists seeking investments will not come to the city of Danville on account of the freight discrimination against it, and that extensive enterprises have refused to come and have gone elsewhere for that reason.

Pettioner is advised that railroads are public highways, and the fundamental characteristic of public highways is the right of all persons to use them upon

equal terms. For railroads to deny this equality is a misuser of their franchises, and to permit them to build up one city or community at the expense of another, or to oppress the inhabitants of one community with burdens in order that favors may be bestowed upon others, is, it is respectfully submitted, an indefensible act of government.

This petitioner therefore prays that the interstate-commerce act may be so amended as to prohibit such undue advantages as are given the said favored cities over the city of Danville, and as to allow the Interstate Commerce Commission not only to decide what are discriminating and unreasonable rates on freight, but to prescribe and fix rates, and to enforce its orders and judgments when they are made.

And petitioners will ever pray, etc.

CITY OF DANVILLE, VA.,
By E. L. SWAIN,
President of the Board of Aldermen of the Council of the City of Danville.
W. P. HODNETT,
President of the Common Council of the Council of the City of Danville.

The CHAIRMAN. Your city complains of discriminations, and I think a number of such complaints have been considered by the Interstate Commerce Commission.

Mr. AIKEN. This petition states that we have gone before the Commission.

The CHAIRMAN. With what result?

Mr. AIKEN. That we can not get relief.

The CHAIRMAN. Did you go to the courts or to the Commission?

Mr. AIKEN. As that petition recites, the Commission directed that those discriminating rates should cease.

The CHAIRMAN. Then what followed?

Mr. AIKEN. Then the railroads refused to obey the order, and the Commission did not have power to enforce its order.

Senator DOLLIVER. The Commission has power to enforce its order that certain discriminations shall cease.

Mr. AIKEN. The railroads are not bound under that order to obey it.

Senator DOLLIVER. While the railroads are not bound to obey an order prescribing a future rate, yet, as I understand, it is within the legal power of the Commission now to order that a certain discrimination shall cease. In other words, the Commission can adjudge the existing rates unreasonable, and when the case of discrimination is made, can order that the discrimination should cease.

Mr. AIKEN. My understanding, Senator, is that the railroads are not bound to obey the order of the Commission, and they do not.

Senator DOLLIVER. That is, where the courts are prescribing rates to take effect in the future?

Mr. AIKEN. That was the order made in this case.

Senator CLAPP. Senator Dolliver, are not you and the witness getting confused? Of course the railroad is not bound to obey the order, and if it does not obey the order, then the Commission brings a suit to enforce it.

Mr. AIKEN. That was done in this case.

Senator CLAPP. Then, if the court sustains the action of the Commission, the company is bound to obey if the order prohibits the continuance of the given rate.

Mr. AIKEN. The case was not taken up to the Supreme Court of the United States.

The CHAIRMAN. To what court did it go?

Mr. AIKEN. It went first to the district court and then to the intermediate court of appeals, and both of those courts reversed the order of the Commission. The substance of the order of the court, so far as it went, was that this was not an unreasonable discrimination.

Senator DOLLIVER. Do you remember upon what ground they based that?

Mr. AIKEN. The conclusion was that the rates were too low to Lynchburg, but not too high to Danville.

Senator CULLOM. There is competition between Lynchburg and Danville?

Mr. AIKEN. Yes, sir.

Senator CULLOM. Was there any competition at Danville at that time?

Mr. AIKEN. If you will carefully peruse this petition, Senator, you will find that the competition at Danville was twice suspended, first in 1886, when there was competition with the Virginia Midland, running from Danville to Washington City, having been purchased by the Richmond and Danville; and then, again, the road was purchased by the competing line. This is stated in the petition. Several years afterwards Danville contributed a large amount of money to build another competing line from Norfolk to Danville, but upon the institution of this litigation before the Interstate Commerce Commission the Southern Railway Company bought up that competitor and removed competition.

Senator NEWLANDS. Bought up the competing line?

Mr. AIKEN. Bought up the competing line.

Senator DOLLIVER. Have you ever been able to get at the motive of the road for killing Danville?

Mr. AIKEN. No, sir; only that they wanted a monopoly of the freight coming through Danville.

The CHAIRMAN. The court decided that those charges were not unreasonable, did it not?

Mr. AIKEN. Yes, sir.

The CHAIRMAN. That decision, made after full hearing, was evidently not appealed to the Supreme Court of the United States.

Mr. AIKEN. The Commission informed me that it was dismissed by the Department of Justice.

The CHAIRMAN. The appeal was dismissed?

Mr. AIKEN. Yes, sir. The Department did not think the city of Danville had a good case, but the fact is, Mr. Chairman, that the wrong still exists.

The CHAIRMAN. Do you think we can make a law here that can correct the decision of the courts?

Mr. AIKEN. I think, when such a condition is shown to exist, the courts ought to be required to enjoin the wrong, not perpetuate it.

The CHAIRMAN. Suppose the Commission had decided against you?

Mr. AIKEN. Then we would have appealed to the courts.

Senator NEWLANDS. You would want the right of appeal, but you would deny the railroad the right of appeal.

The CHAIRMAN. If the Commission decided your way, all right.

Mr. AIKEN. The city of Danville has not been able to carry on the litigation with the railroads.

Senator DOLLIVER. Under the Elkins law we have a provision that the Government of the United States, acting through the Interstate

Commerce Commission, could carry on litigation to adjudicate the question of the reasonableness of just such discrimination as you have described. Have you ever tried that?

Mr. AIKEN. Not under the Elkins law. We have not brought any litigation since the Elkins law was passed. But we have been advised that we have no further remedy under that than we had under the original interstate-commerce law.

Senator NEWLANDS. As I understand, under two periods you had the advantage at the city of Danville of competition between two lines of railroad?

Mr. AIKEN. Yes, sir.

Senator NEWLANDS. And in both cases that competition was ended by a consolidation of lines?

Mr. AIKEN. By the purchase of the line by the Southern Railway Company.

Senator NEWLANDS. And then the rates were put up and were higher than the rates to other points?

Mr. AIKEN. I do not know that they were higher, but there was that difference between the rate to Danville and the rate to Lynchburg.

Senator NEWLANDS. The other points were given less rates, though the distance was greater to those points?

Mr. AIKEN. Yes, sir.

Senator NEWLANDS. What effect has that had upon the growth of Danville? Has it diminished in population?

Mr. AIKEN. The petition recites that fact.

Senator NEWLANDS. Has population diminished at all there?

Mr. AIKEN. The population is greater now than it was in 1886, but that is due principally to the annexation of more territory to the city of Danville. The city of Danville proper has not increased in population in proportion to other favored cities in the State of Virginia.

Senator CULLOM. What is the population of Danville now?

Mr. AIKEN. Something over 17,000.

Senator NEWLANDS. When was the last consolidation that took place with the Southern Railway?

Mr. AIKEN. In 1893 or 1894 they purchased the Atlanta and Danville road.

Senator NEWLANDS. Since then you have been suffering under this discrimination?

Mr. AIKEN. We have had no competition whatever and these discriminations have continued.

Senator NEWLANDS. When that consolidation was accomplished was the growth of the city checked?

Mr. AIKEN. I think it was, sir.

Senator KEAN. If the rate to Danville had been reduced to what the Commission said it should be, and that order had been complied with, what would you have done?

Mr. AIKEN. It would not have been necessary to reduce that rate. Our contention was that we were entitled to the same rates that Lynchburg took.

Senator DOLLIVER. What roads has Lynchburg?

Mr. AIKEN. Lynchburg has the Southern, the Chesapeake and Ohio, and the Norfolk and Western.

Senator CULLOM. And what has Danville? There seem to have been two or three roads there.

Mr. AIKEN. Danville has nothing but the Southern. This petition recites the fact that it had other roads at one time, but they have been absorbed by the Southern.

Senator CULLOM. You have two or three coal lines, but they are all under the Southern?

Mr. AIKEN. All under the one road.

Senator NEWLANDS. So upon two occasions Danville has been the victim of consolidation?

Mr. AIKEN. That is the fact.

Senator NEWLANDS. That consolidation, I presume, has been beneficial to other points, but not to Danville?

Mr. AIKEN. I do not think it has, and that is the opinion of the city I represent.

Senator NEWLANDS. Your contention would compel, would it not, the making of distance rates throughout the United States?

Mr. AIKEN. I think it would, sir; either that or a rate by which cities situated as Danville and Lynchburg are could be made an exception under the long and short haul provision. They are situated in the same territory and they have been contesting for trade in that same territory for seventy-five years or more.

Senator NEWLANDS. In one case, as I understood you, Danville subsidized a road. Is that true?

Mr. AIKEN. In two cases the Southern Railway Company purchased the competing roads running into Danville.

Senator NEWLANDS. Did I not understand you to say that Danville had paid out a certain amount of money?

Mr. AIKEN. Yes, sir; to build both competing lines.

Senator NEWLANDS. Was that all in the shape of a subsidy voted?

Mr. AIKEN. The city issued its bonds.

Senator NEWLANDS. And the purpose of that was to promote competition?

Mr. AIKEN. To promote competition, and more than one-third of the public debt of Danville to-day consists of the obligations the city incurred in the issue of bonds to build those very roads. Danville is paying interest on those bonds at the present time that were issued to build these roads.

Senator NEWLANDS. And that competition has been entirely ended by the consolidation of the very road that Danville helped to build, its consolidation with the Southern?

Mr. AIKEN. That is the situation.

Senator DOLLIVER. Did I understand you to say that the rates were increased after consolidation?

Mr. AIKEN. No, sir.

Senator NEWLANDS. The rates were probably lower than the rates to other places?

Mr. AIKEN. I believe they were at the first consolidation; that is the opinion of merchants who have given testimony in the case, which is to be found in the record of the case before the Interstate Commerce Commission; but immediately after the absorption of the second competing line I have no reason to believe that they were raised, though I am informed that they have been raised recently.

The CHAIRMAN. How are your coal rates?

Mr. AIKEN. Very, very high, but I am not prepared to give exact rates.

Senator DOLLIVER. I suppose the water transportation to Richmond is not in that situation?

Mr. AIKEN. The water transportation is to Norfolk. That would not affect Norfolk any more than it would Danville.

Senator DOLLIVER. Is there not water transportation to Richmond?

Mr. AIKEN. Yes, sir; and I have no doubt that affects it to some extent.

Senator CULLOM. All this difference between conditions at Lynchburg and at Danville results from the fact that at Lynchburg there is competition, and at Danville there is none?

Mr. AIKEN. Yes, sir; that is the ground upon which it has been put.

Senator CULLOM. The other lines from Danville to Richmond and to Norfolk belong to the same company that owns the main line that runs through Danville, so that the difference in charges is the result of the competition in one case, and there is no competition in the other?

Mr. AIKEN. Yes, sir.

STATEMENT OF MR. IRVING M. BEAN.

The CHAIRMAN. Mr. Bean, please state your name, occupation, and residence.

Mr. BEAN. My name is Irving M. Bean; I live in Milwaukee; I represent the Northwestern Iron Company as its president.

The CHAIRMAN. How much freight does it ship per year?

Mr. BEAN. I should say 3,000 or 4,000 tons.

The CHAIRMAN. Now, proceed with your statement, if you please.

Mr. BEAN. The business of the Northwestern Iron Company is making pig iron. It has a blast furnace, and it owns an iron-ore mine near the furnace, the furnace being located near Mayville.

I am not accurately advised, and do not know whether it is accurately known by anybody, just exactly what legislation regarding the transportation of freight is imminent, but I am advised that the gentlemen seeking this legislation desire that a Government commission should be appointed whose duty and power it would be to establish freight rates absolutely all over the country.

If that be so, it seems to me that the only reliable guide that that commission could have in establishing its rates would be a distance rate. If that be so, it would very materially affect my own personal interests, and it is, Mr. Chairman, I think, because such legislation would be adverse to my interests, if, indeed, they would not very seriously imperil them, that I appear before you.

I do not desire to make any remarks regarding general legislation. I suppose that what you gentlemen want is a concrete case, and I have such a case to present.

The company which I represent owns a mine of iron ore of large extent, many millions of tons, but it is not of a high grade; it is not high in metallic iron, and it contains a high percentage of phosphorus. All metallurgists will understand that it would be difficult, if not impossible, to make a merchantable pig iron out of ore that contains a high percentage of phosphorus. But by inter-

mingling those ores with the ores of the Lake Superior district, and by bringing coke from Pennsylvania to smelt those ores, this large body of low-grade ores can be utilized. They could not be utilized unless low rates on coke from the South and from Pennsylvania, and low rates on iron ore from the Lake Superior region, could be installed. Those rates are installed.

The CHAIRMAN. How far is Mayville from Milwaukee?

Mr. BEAN. Mayville is 55 miles from Milwaukee.

The CHAIRMAN. And what are the freight rates on coal?

Mr. BEAN. The freight rate on Connellsville coal is about 5 cents more at Mayville than at Milwaukee.

The CHAIRMAN. What is the distance from Mayville to Connellsville?

Mr. BEAN. I do not know exactly, but I should think it would be somewhere about 500 miles.

The CHAIRMAN. Proceed.

Mr. BEAN. My interest in the matter is this: That if a distance tariff were installed by the Government that low rate would not prevail; that if the Commission were guided solely by distance and considered the fact that the rate to Milwaukee was, as it happens to be, $2.75, and it should be 1 cent a ton exactly for 55 miles farther, or even half a cent, that would very adversely affect the interests of the Northwestern Iron Company.

There is another reason, Mr. Chairman, why I should hope that no such law as is suggested should be enacted, and that is because it would be too rigid. My experience and observation teach me that freight rates should be elastic; that they should rise and fall as the prices of commodities rise and fall. I know of no reason why the railway company should continue the same rate in force month after month. It depends upon conditions.

At some periods of the year they might, for example, have a large number of idle cars. Railway companies make their money on cars in motion, not on cars at rest. Suppose that I should sell in Chicago quite a tonnage, from 5,000 to 10,000 tons of pig iron. I am in competition with Ohio and the South. Suppose I go to the Milwaukee and St. Paul or the Chicago and Northwestern and say, "I must have a lower rate than the published tariff." I tell them why. Now, it may be that at that very time they have an oversupply of cars, and that, among other reasons, may induce them to grant my request.

It seems to me, Mr. Chairman, that, after all, the traffic managers do not make the freight rates of the country. It is the business that makes the freight rates. It is the great irresistible current of trade that makes the rate.

The objection to a commission sitting in the city of Washington is that it is not as accessible to the merchants and manufacturers as are the traffic managers.

It is said, and I have no doubt truly, that many hardships have been undergone by the patrons of the railroads. I have no doubt but they have done wrong. If they have—if they have violated the law—I say, Mr. Chairman, let them be punished the same as any other wrongdoers. But do not go to the extent of imposing upon a commission composed of men who are not as expert as railway men are the duty of establishing rigid rates for all the railways of the country.

I am aware, Mr. Chairman, that you are impatient, and I will not further detain you.

Senator CULLOM. Do you think, as a business man, that Congress could afford to pass a mileage law for the whole country?

Mr. BEAN. No, sir; I do not.

Senator NEWLANDS. With what traffic managers do you come in contact when you want to adjust rates for your concern? Where is their office located?

Mr. BEAN. In Chicago.

Senator NEWLANDS. You deal with all the railroads there, do you?

Mr. BEAN. Oh, no; not with all of them. Our industry is located on the Chicago, Milwaukee and St. Paul Railway.

Senator NEWLANDS. Is there any other competitive line at the same place?

Mr. BEAN. Not at Mayville.

Senator NEWLANDS. So your entire business is with that road?

Mr. BEAN. Yes, sir.

Senator NEWLANDS. How far are you from Chicago?

Mr. BEAN. One hundred and forty miles.

Senator NEWLANDS. When you want to make rates you do not communicate with your local agent there, but with the traffic manager at Chicago?

Mr. BEAN. Yes, sir.

Senator NEWLANDS. We will assume that there is a Government commission that has the power, upon complaint, to revise the rates fixed by the railroads and to substitute other rates for them. Would it be more convenient for you if that commission were located at Chicago or at Washington?

Mr. BEAN. At Chicago.

Senator NEWLANDS. You would want it as convenient as the present traffic manager?

Mr. BEAN. Certainly.

Senator NEWLANDS. Assume, now, that we do give this power to an interstate commerce commission. In your judgment, would it conduce to the convenience of traffic if the commission were divided into districts and a certain number of men assigned to each district, so that they would be near the shippers?

Mr. BEAN. Certainly; certainly.

Senator NEWLANDS. Do you think it would be more convenient?

Mr. BEAN. Certainly I do.

Senator NEWLANDS. Your idea is that the Government, if it does enter upon this system, should pursue substantially the same system that the railroad itself does?

Mr. BEAN. Surely.

Senator NEWLANDS. And that the power of revision should be very near to the power of originally making the rate? Is that your idea?

Mr. BEAN. Business transactions, Senator, are done very rapidly nowadays, in this strenuous age, and it is necessary to see the proper authorities and determine the matter quickly.

Senator NEWLANDS. Yes.

Mr. BEAN. And for that reason, of course, it would be better.

Senator NEWLANDS. Do you find, in your business, that changes in the rates are frequently made?

Mr. BEAN. No, sir.

Senator NEWLANDS. Have not your rates been pretty unvarying for the last three or four or five years?

Mr. BEAN. Yes.

Senator NEWLANDS. Is not that so with most shippers?

Mr. BEAN. I would not undertake to speak for other shippers.

Senator NEWLANDS. Then, as a matter of fact, whilst you contend for elasticity, the fact is that there has been a rigid rate for years, so far as your property is concerned.

Mr. BEAN. It has not been absolutely rigid. There have been some changes, though not many, in my particular business.

Senator NEWLANDS. But do you think that other businesses might require greater variations in rates from time to time? Do you not think there is a good deal of exaggeration of this necessity for changing according to conditions? Are the rates of the country in such an elastic state that they are being constantly changed with reference to all occupations?

Mr. BEAN. They are very frequently changed, I think, Senator. Take the case that I instanced, where there is a very large consumer of iron, like the International Harvester Company, or some great establishment of that kind, the market for a large tonnage of iron. Every manufacturer is after it, and he is trying to persuade the traffic manager to reduce the rates, and sometimes he succeeds. I have succeeded. I do not pretend to say that I am entirely satisfied with the conduct of the traffic managers in all respects. I think that they have been pretty hard upon me in many instances. But as between the two evils, if they must be so called, I would prefer to have the making of freight rates rest with the railway companies rather than with a Government commission.

Senator NEWLANDS. Yes; but if you could have a system, now, of Government control under which, side by side with the traffic manager who fixed your rates, there would be a Government official to whom you could appeal in case you were dissatisfied with the action of the railroad, would you not regard that as rather adding to the advantage of your business than as taking away from it?

Mr. BEAN. That would relieve it of some objections I think, Senator.

Senator NEWLANDS. Yes; if the power of revision were near to the shippers it would relieve them?

Mr. BEAN. It would be better so than to have a stationary commission here in the city of Washington, far distant from where my business is and the buisness of most manufacturers.

Senator NEWLANDS. Yes; that is all, sir.

The CHAIRMAN. You may be excused, Mr. Bean.

STATEMENT OF MR. FRANK SLOSSON.

Mr. SLOSSON. My name is Frank Slosson. I am a resident of Kenosha, Wis., representing the Bayne Wagon Company and the Chicago-Kenosha Hosiery Company.

Kenosha is a local station on the Northwestern Railroad. I have been in business in Kenosha, in these industries, for over thirty years. The business of the Bayne Wagon Company means the shipment out of from nine to eleven hundred cars a year, and the receipt of something like fourteen or fifteen hundred. The business of the hosiery company means the shipment out of manufactured product of about

3,000,000 pounds and the shipment in of considerably more than that.

We do business solely with the Northwestern road, being local. We are very much in favor of continuing our business with the Northwestern road without governmental interference of any kind, being perfectly satisfied with the treatment we have had.

The town of Kenosha, since I have known it, has grown from about 4,000 people to about 17,000, and has been strictly local. We have no complaints to make, and wish to be let alone.

STATEMENT OF E. C. FINKVINE, ESQ.

The ACTING CHAIRMAN (Senator CULLOM). Where do you reside, Mr. Finkvine?

Mr. FINKVINE. In Des Moines, Iowa.

The ACTING CHAIRMAN. What is your business or avocation?

Mr. FINKVINE. I am engaged or interested in the retail lumber and coal business and the wholesale grocery business in Iowa.

The ACTING CHAIRMAN. You may proceed and give your views about this subject in your own way.

Mr. FINKVINE. We have about sixty lumber yards scattered over western Iowa, on the Northwestern, the Milwaukee, the Rock Island, the Chicago, Burlington and Quincy, and the Illinois Central roads. We ship to these yards about 5,000 cars a year. I am interested in the wholesale grocery business at Des Moines, Sioux City, and Cedar Rapids; and we ship in groceries to these towns about 3,500 to 4,000 cars a year.

Our business to-day is very satisfactory. We have no complaint to make. Our treatment by the railroads is all that we could desire. We are getting no rebates, no favors in any way. We are doing our business under the printed tariff; and all we want is to continue to do so. We are very much in favor of allowing the railroads to make the rates for us, rather than to have a commission make them; and we believe that the railroads understand their business and ours, are nearer to the shippers, and have our interest better at stake than any commission can or could have in years to come, if ever. And inasmuch as we have prospered and are prospering both in our wholesale and in our retail business, and our farmers are prospering, under the law and under the railroad management, we believe it will be a great deal better for us to continue in this way than to have any change. We believe that any change that could be made or would be made would be detrimental. For that reason we would like to have the railroads make their own rates. We would like to work under the interstate-commerce act; we want every tariff printed, open alike to us and to everyone else.

In the twenty-odd years that we have been in business there has been a reduction on almost every article in and out of our State. The rates on lumber have been reduced; the rates on coal have been reduced; the rates on groceries in the State have been reduced, and the rates on grain from the State out have been reduced. Our State is prosperous; our manufacturers, our jobbers, our retailers, and our farmers are all prosperous; and we would like to have the railroads continue as they are now.

Senator DOLLIVER. Mr. Finkvine, what is the central market from which you introduce lumber into Iowa?

Mr. FINKVINE. We introduce lumber from the North, South, East, and West. Our lumber heretofore has principally come from the North. We are shipping a large quantity of lumber to-day from the West, and a little from the East.

Senator DOLLIVER. Do you mean from the Puget Sound country?

Mr. FINKVINE. Yes, sir; from Oregon and Washington. Most of the shingles that are used in Iowa and the West to-day come from Washington.

Senator DOLLIVER. How far is that from the Missouri River?

Mr. FINKVINE. About 2,000 miles, I think, or a little more.

Senator DOLLIVER. And what is the rate on lumber from the Pacific coast?

Mr. FINKVINE. The rate from our point on shingles is 62 to 64 cents a hundred pounds.

Senator DOLLIVER. Has any material variation in that rate occurred in recent years?

Mr. FINKVINE. No, sir; the rate has been about the same for the last five years.

Senator DOLLIVER. From what point do you introduce groceries into Iowa?

Mr. FINKVINE. We ship groceries, canned goods, dried fruits, sugars, coffees, tobaccos, and all articles of that character; and we have recently introduced wooden ware and paper and other articles.

Senator DOLLIVER. From what point?

Mr. FINKVINE. We ship our sugars from New York and New Orleans. We ship our canned goods and our dried goods from Michigan and the West.

Senator DOLLIVER. How is the rate on staple groceries into Iowa from New York calculated?

Mr. FINKVINE. The rate on sugars from New York to Des Moines is 43 cents.

Senator DOLLIVER. Is that based upon a through rate, or is it the Mississippi rate plus the local rate from the Mississippi River to Des Moines?

Mr. FINKVINE. I think it is based upon the Mississippi rate plus the rate from the Mississippi River to Des Moines.

Senator DOLLIVER. And in introducing canned goods from the West, is it the through rate from Des Moines, or is it a rate based upon the Missouri River rate plus a local rate?

Mr. FINKVINE. I think it is the through rate to Des Moines. The rate does not vary for hundreds of miles.

Senator DOLLIVER. I have heard that our State is subjected to a very grave commercial disadvantage because of the fact that we are between two rivers, which constitute the base lines for the calculation of through rates; and that the interior cities, such as Des Moines is, are subjected to a discrimination by reason of the fact that goods coming from the West stop at the Missouri River and take on a local rate, and goods coming from New York stop at the Mississippi River and take on a local rate from that point, leaving us somewhat at a disadvantage, especially in the interior cities of Iowa. One man wrote me that we were "robbed coming and going."

Mr. FINKVINE. I think our carload rates plus our local rates are a little higher than the through local rates from Chicago; but we can stand an additional rate, on account of our location.

The ACTING CHAIRMAN. I did not catch that.

Mr. FINKVINE. I say I think our carload rates plus the Ivy Falls distance tariff rate, which is in vogue in Iowa, is a little higher than the local rate from Chicago to a point like Carroll, on the Northwestern road, Senator.

The ACTING CHAIRMAN. And you said you could stand that?

Mr. FINKVINE. Yes, sir; by reason of our location we can get the goods to the customer so much quicker that he is willing to pay the difference and our business is prosperous.

Senator DOLLIVER. You are in touch with the mercantile and distributing interests throughout our State, are you not?

Mr. FINKVINE. Yes, sir; I am.

Senator DOLLIVER. Are you familiar with the general opinion of merchants and manufacturers in the State as to our local situation in the matter of freight rates?

Mr. FINKVINE. Yes, sir.

Senator DOLLIVER. I would like to hear you a little upon that.

Mr. FINKVINE. I am only familiar with it to this extent, that to-day our manufacturers and our jobbing houses are perfectly satisfied with rates, and in conversation with my competitors I understand that they are perfectly satisfied to leave the rates as they now stand.

Senator DOLLIVER. Do you refer now to the interstate rates or to the Iowa distance rates?

Mr. FINKVINE. I refer to both. Our rates into the State and our rates from a distributing point like Cedar Rapids, Sioux City, or Des Moines are satisfactory to us.

Senator DOLLIVER. Are they satisfactory to the public at large?

Mr. FINKVINE. Yes, sir; I hear no complaint.

Senator DOLLIVER. Have they been subject to fluctuations in recent years?

Mr. FINKVINE. No, sir; not very much. Our rates are very stable. They have in the last fifteen or twenty years been reduced. In the last four or five years they have been very permanent.

Senator DOLLIVER. You heard Mr. Bacon's statement in reference to the astonishing increase in rates on staple merchandise within the last five years?

Mr. FINKVINE. Yes, sir.

Senator DOLLIVER. Has that affected the interests you represent?

Mr. FINKVINE. Not in the least.

Senator DOLLIVER. How do you account for the fact, Mr. Finkvine, that our manufacturing interests in Iowa seem to be languishing?

Mr. FINKVINE. Well, I do not know; I am not in the manufacturing business, and I do not account for it. We have cheap fuel in Iowa, and I see no reason why we should not be a manufacturing center, especially in the neighborhood of Des Moines.

Senator DOLLIVER. Are you familiar with any complaints of manufacturers about the difficulties of getting raw material into the interior of Iowa and getting finished products shipped out into other sections of the world?

Mr. FINKVINE. No, sir.

Senator DOLLIVER. I notice that the press in the State complains of what appears to be a decline in population and a disappointment in

all our cities, or many of them, in the matter of the increase in population, as illustrated in the census that is now being published there.

Mr. FINKVINE. Yes, sir. I think the disappointment, Senator, was largely due to the fact that they had hoped for more than they were entitled to. Des Moines, for instance, has a population of 75,000. Our press claimed about 85,000. We made a gain from 62,000 to 75,000 in ten years, which was not a bad gain.

Senator DOLLIVER. Do you regard the growth that has occurred in the last twenty years in a city like Des Moines as up to what might have been expected of a city situated in the center of a State like Iowa?

Mr. FINKVINE. I think it is all we could expect, situated as we are in the center of an agricultural State. Des Moines is prosperous.

Senator DOLLIVER. Is there any more reason why our State should be entirely agricultural than there is that a State like Wisconsin should be?

Mr. FINKVINE. Wisconsin has a great deal of hard wood for manufacturing wagons, and materials of that kind, that Iowa has never had.

Senator DOLLIVER. Is there anything in the railroad situation that accounts for the fact, for example, that we buy most of our farm machinery in Iowa from other States?

Mr. FINKVINE. I do not think the railroads have anything to do with that part of it. We are not in shape to manufacture agricultural implements in Iowa.

Senator DOLLIVER. Why not?

Mr. FINKVINE. We have not the material. We have got to ship the raw material in—both the lumber and the iron.

Senator DOLLIVER. We have as much material as they have in Chicago.

Mr. FINKVINE. Well, Chicago is perhaps nearer to the base of supply than we are. The Chicago rate on lumber is less than the Des Moines rate. The Chicago rate on hard wood is much less than the Des Moines rate.

Senator DOLLIVER. The city of Rockford, in the north, has doubled its population again and again by the establishment of a magnificent furniture-manufacturing industry. Is there any reason why a city situated as Cedar Rapids or Ottumwa or Des Moines is should not develop a similar industry?

Mr. FINKVINE. I know of no reason.

Senator DOLLIVER. You know of nothing in the freight situation?

Mr. FINKVINE. I know of nothing in the freight situation that would prevent it, as far as rates are concerned, outside of what I have mentioned—that we have to ship the raw material in and the finished product out.

Senator DOLLIVER. We have a great live-stock interest in Iowa.

Mr. FINKVINE. We have.

Senator DOLLIVER. Yet we are buying our dressed meats in Chicago and in Omaha. Is there anything in the freight situation that would discourage the establishment of meat packing and kindred industries in Iowa?

Mr. FINKVINE. We have a packing house in Des Moines that is very prosperous to-day. We have a large packing house in Sioux City.

Senator CLAPP. Do either of those consume beef?

Mr. FINKVINE. Pardon me?

Senator CLAPP. Do they pack beef?

Mr. FINKVINE. Oh, yes.

Senator DOLLIVER. Do they manufacture dressed beef for local consumption?

Mr. FINKVINE. They do. A large portion of the meat consumed in Des Moines is bought from an Acre packing house.

Senator DOLLIVER. Is there anything in the freight situation in Iowa that would prevent the establishment of local packing and meat distributing points in cities situated like Carroll, and Boone, and Fort Dodge, for example?

Mr. FINKVINE. Nothing that I know of.

Senator DOLLIVER. And have you made a practical study of the freight situation with respect to such matters?

Mr. FINKVINE. As far as the packing-house products are concerned, I have not. All I know is that our packing house at Des Moines is successful to-day. It is increasing its capital and its plant, and claims to be doing a very lucrative business.

Senator DOLLIVER. Where do they sell their product?

Mr. FINKVINE. I do not know what their market is. They have a market in St. Louis, I believe—a house in St. Louis. I do not know whether they keep one in Chicago or not.

Senator DOLLIVER. But there is nothing in the freight situation to prevent the sending of their product wherever they desire to sell it or can find a market for it?

Mr. FINKVINE. No, sir; I think there is nothing to prevent it in the freight situation—to prevent the shipping of the hogs and cattle in or the finished product out.

Senator DOLLIVER. Now, in your contact with the business community, are there complaints in Iowa in respect to inequalities of freight rates as relates to communities—the different cities and towns of the State?

Mr. FINKVINE. No, sir. Our towns, as you know, are about all of one size. We have very few large cities in Iowa, and I think the towns are treated about on an equality. We are in the lumber business in 60 towns in western Iowa, and I hear no complaint in those towns of any discrimination against them by the roads in any other line.

Senator DOLLIVER. Is there a uniformity in rates from Chicago to the cities in Iowa? That is to say, is the rate (for example) from Chicago to Des Moines exactly the same as it is to other points in Iowa situated at the same distance from Chicago?

Mr. FINKVINE. Yes, sir. Our rate to Des Moines is a little higher than our rate to Davenport or to Cedar Rapids or Marshalltown.

Senator DOLLIVER. How much higher?

Mr. FINKVINE. Three cents—from 2 to 3 cents, varying on the different articles.

Senator DOLLIVER. A gentleman wrote me that the Illinois Central, together with the Minneapolis and St. Louis, which is an affiliated line, makes a rate through Fort Dodge to Des Moines which is less than the rate on the Illinois Central from Chicago to Fort Dodge, although the freight passes through our town and goes 80 miles south to Des Moines.

Mr. FINKVINE. That would not be the natural channel for the Illinois Central's freight to Des Moines.

Senator DOLLIVER. Exactly; I suppose not, the Illinois having no line to Des Moines; and I imagine that the rate arises from the fact that there is a lesser rate from Chicago over the Rock Island, possibly, to Des Moines, than there is over the Illinois Central to Fort Dodge, and that they have to meet the competition or not deliver any goods in Des Moines.

Mr. FINKVINE. They publish a joint rate with the Ivy Falls road from Chicago exactly the same as the Rock Island, the Chicago, and the other roads.

Senator DOLLIVER. What I want to get at is, is there any complaint, or do you know of complaints——

Mr. FINKVINE. I have heard no complaints.

Senator DOLLIVER (continuing). From the cities of Iowa as to disadvantages in their relations with Chicago?

Mr. FINKVINE. No, sir.

Senator DOLLIVER. Is there any complaint anywhere in Iowa in respect to rates that are exorbitantly high?

Mr. FINKVINE. No, sir; at least I have not heard of them. We are in a position in our own line, if there is any complaint, Senator, to know of it. We cover a large line, shipped all over the State. We are able to-day to compete in our wholesale grocery business with Chicago, Minneapolis, Omaha, and St. Louis, and any other points on the east of us.

Senator DOLLIVER. In Iowa?

Mr. FINKVINE. In Iowa. If we were not on an equality, if they were getting better rates than we were, we could not do it. The fact that we are able to compete leads us to believe that they are doing business on the open tariff the same as ours.

Senator DOLLIVER. Is there any complaint in respect to one firm getting the advantage of another in the way of rebates or secret discriminations?

Mr. FINKVINE. No, sir. We know that we are not getting any benefit in that way, and from the price of our goods and our competitors' goods we have reason to believe that they are working under the same law that we are without any benefit.

The ACTING CHAIRMAN. And obeying the law?

Mr. FINKVINE. Obeying the law—that the railroads are obeying the law. A large portion of our business is local on the different roads, and it would be very foolish for the roads to make a concession there, if they desired to do so.

Senator DOLLIVER. I do not desire to ask any more questions.

The CHAIRMAN. There is nothing further. The committee is very much obliged to you, Mr. Finkvine.

STATEMENT OF MR. J. ALLEN SMITH.

The ACTING CHAIRMAN (Senator CULLOM). Mr. Smith, will you give the stenographer your name, place of business, and residence?

Mr. SMITH. My name is J. Allen Smith; my residence is Knoxville, Tenn.; my business is merchant milling.

The ACTING CHAIRMAN. Go on and state what you have to say to this committee, Mr. Smith.

Mr. SMITH. I want to call your attention first to the fact that I am a member of the Manufacturers and Producers' Association, of Knoxville, Tenn., as well as the Commercial Club of Knoxville, Tenn.; and at a meeting of the Manufacturers and Producers' Association of Knoxville, held a short time ago, this question was presented to them and discussed at some little length, and resulted in the following resolution, which I will be pleased to read. I will say, however, that before the resolution was presented a preamble was read; and as that is a little lengthy for the present occasion, I will just leave that with the stenographer.

The ACTING CHAIRMAN. That will be printed as a part of the resolution.

The preamble and resolution above referred to are as follows:

PREAMBLE.

"It is conceded by nearly all parties on both sides of the controversy that the Interstate Commerce Commission, as it exists under the law, is a good thing for the community at large, because it protects them against unjust rates and against inequalities in rates which may exist or may be made by the railroad companies.

"The Elkins bill goes one step further and provides what is conceded by all parties to be almost, if not quite, a perfect law, protecting the public against trust methods of every description, and particularly against the evil of favoritism in railroad rates, and the greatest of all evils—the secret rebate.

"The present question now being discussed before the Senate committee sitting at Washington is in reference to the Townsend bill, which has already passed the House, but which, it is believed, was done without due consideration of the far-reaching effects of this bill, should it become a law.

"The particular feature of the Townsend bill is the clothing of the Commission with power to arbitrarily make the rates and put them into effect. It is considered that this is not only unnecessary, but that it is an innovation upon the rights and liberties of the free American citizen.

"The first question arises as to the benefits which would be derived by the public. The original interstate-commerce law and the Elkins bill fully protect all parties, except the possibility of the rates which are made by the railroads being excessive. This is a question which might be carefully looked into, but it is not thought that the present existing rates are sufficiently excessive—if they are excessive at all—to justify this very radical legislation. This proposed Townsend bill does not in any way strengthen the Elkins bill or the original interstate-commerce bill. What we should deem as particularly desirable is the enforcement of the laws as they now stand, which, if

done, will prevent discrimination, secret rebates, and the abuses arising from the use of the private car lines, which have done so much to create a prejudice on the part of many shippers and a disposition to favor drastic laws against the transportation companies. What we want in this country is absolute protection against secret rebates, unjust rates, and rates which in any way favor one shipper over another when surrounded by similar conditions: Therefore,

"*Be it resolved*, That the Manufacturers and Producers' Association, of Knoxville, Tenn., are opposed to any legislation at this time which will give additional powers to the Interstate Commerce Commission, and that, instead of additional legislation, they favor a strict enforcement of the present law known as the Elkins antitrust bill, believing, if this is done, that the interests of the merchants, manufacturers, various communities, and the people at large will be fairly well protected."

At the regular meeting of the Manufacturers and Producers' Association Tuesday night, May 2, the following was unanimously adopted:

"*Resolved*, That the Manufacturers and Producers' Association, of Knoxville, Tenn., is opposed to any legislation which will give additional powers to the Interstate Commerce Commission; and that, instead of additional legislation, they favor a strict enforcement of the present laws known as the 'Elkins antitrust bill,' believing, if this be done, that the interests of the merchants, manufacturers, various communities, and the people at large will be fairly well protected.

"THOS. O'C. HOUSE, *Secretary*."

The ACTING CHAIRMAN. You think no change should be made in the law?

Mr. SMITH. It was not deemed that there should be any additional legislation, particularly until the present laws are fully tried, believing that they are ample to cover all the requirements and necessities, as is stated in that resolution.

The ACTING CHAIRMAN. I notice that you allude to the Elkins law. Do you want the law that existed prior to that repealed?

Mr. SMITH. No, indeed. We consider that the interstate-commerce law is the foundation of all of that, and is the main protection, as far as it goes.

Senator DOLLIVER. What commercial body is the author of that resolution?

Mr. SMITH. The Manufacturers and Producers' Association, of Knoxville, Tenn.

Senator DOLLIVER. How extensive an institution is that?

Mr. SMITH. I think they have about 40 or 50 members; but I will not be sure.

Senator DOLLIVER. How many?

Mr. SMITH. Probably 40 to 50 members; and it comprises the principal manufacturers and a number of the coal operators of that section.

Senator DOLLIVER. Are there any complaints about railway management in Knoxville or in that neighborhood?

Mr. SMITH. I will have to confess that there are, more or less.

Senator DOLLIVER. What is the nature of them?

Mr. SMITH. That, sir, would require an answer that would be so very elaborate that I should hesitate to enter upon it.

Senator DOLLIVER. Just mention one or two, so that we can get a general idea of the troubles of Knoxville.

Mr. SMITH. One complaint amongst the merchants of Knoxville is that first-class freight can be or is hauled from New York and Boston through Knoxville to Nashville, Tenn., at a less rate of freight than is charged to Knoxville.

Senator DOLLIVER. Do you regard that as a bad thing?

Mr. SMITH. Some regard it as bad.

Senator DOLLIVER. What are you trying to do to stop such things as that?

The ACTING CHAIRMAN. Do you think they ought to be stopped?

Mr. SMITH. That, Senator, is one of the great questions of the day—how to adjust these matters.

Senator DOLLIVER. Have they reached any tentative solution of it at Knoxville?

Mr. SMITH. I think every fellow who is interested has a solution that will satisfy him.

Senator DOLLIVER. Are the people who are subject to that discrimination the same people who send this memorial here?

Mr. SMITH. The principal persons who are complaining of that condition are not the majority of those who are in the Manufacturers and Producers' Association.

Senator DOLLIVER. So the Manufacturers and Producers' Association—does that reflect the discontent that prevails among the people who are being discriminated against in favor of Nashville?

Mr. SMITH. I am not ready to confess that there is a great deal of dissatisfaction on that score, Senator.

Senator DOLLIVER. What is the discrimination; how much does it amount to?

Mr. SMITH. In this particular instance it amounts to 15 cents a hundred.

Senator DOLLIVER. And how far beyond Knoxville from New York is Nashville?

Mr. SMITH. About 260 miles.

Senator DOLLIVER. And they get a less rate to Nashville than they do to Knoxville?

Mr. SMITH. Yes.

Senator DOLLIVER. It would seem to me that that would create a good deal of uneasiness at Knoxville and that there would be somebody down there anxious for some remedy for a situation like that. What remedy would you suggest for a situation of that kind?

Mr. SMITH. As I said, that is a great question, and that is one which has occupied the attention of the rate-making people of the railways leading to Knoxville as well as the Interstate Commerce Commission, and as well as the courts. I think the Supreme Court of the United States has finally passed on that question; and yet, with all that, there are some people in Knoxville who are not thoroughly satisfied that it can not be adjusted.

The ACTING CHAIRMAN. Nashville is on a waterway, is it not—on a river?

Mr. SMITH. Yes, sir; on the Cumberland River.

The ACTING CHAIRMAN. That makes some difference, of course.

Senator DOLLIVER. Do you think the Elkins law is adequate to adjudicate the question of whether that discrimination is just and reasonable or not?

Mr. SMITH. I think the interstate-commerce law is sufficient to deal with that question—that if it is found to be unreasonable it can be adjusted in the courts, and it has taken that course.

Senator DOLLIVER. That agrees with the opinion of Justice Brewer and Justice Harlan in the Missouri Pacific case, but it does not agree with the opinion of the court. The court, however, says in that case that a discrimination like that can be made a subject of adjudication under the Elkins law, although not under the original interstate-commerce act.

Mr. SMITH. Well, you are thoroughly familiar with the law, and I am not; I have just a mere outline—smattering of it.

Senator DOLLIVER. Have your lawyers or your people who are interested made any move to bring that discrimination into court, with a view to getting the judgment of the circuit court on it?

Mr. SMITH. No, sir; they have not.

The ACTING CHAIRMAN. Has there ever been a case there where the Commission passed on the question of whether it was right to charge as much or more to Knoxville as to Nashville from New York, say?

Mr. SMITH. This case was taken up, I will explain, by the merchants of Chattanooga. I mentioned the case of Knoxville as having gone into the courts; but it was at the instigation of the merchants of Chattanooga, and not of Knoxville.

The ACTING CHAIRMAN. And what was the decision?

Mr. SMITH. The decision, as I understand it, finally was that the rate might stand, and they might continue to haul their goods at a dollar a hundred to Knoxville, and continue to haul through Knoxville on to Nashville for 85 cents a hundred; this owing to the fact that what is termed the trunk lines are the lines that make the rate to Nashville. Probably the rate made to Cincinnati and the local rate from Cincinnati out to Nashville would be equal to 85 cents; and it was then up to the lines leading through Knoxville to either make an 85-cent rate or not do any of the business.

The ACTING CHAIRMAN. If the case has been adjudicated and settled, you can not raise any question about it, I suppose, under the law as it is?

Mr. SMITH. It is a principle, I believe, that has been established by the courts as correct. And I will say, furthermore, lest I mislead some of you, that I believe there is not the antagonism in the city of Knoxville among the merchants who handle this very class of goods that there was at one time. In other words, they have been appealed to, and their reason has been appealed to; and in fact this very rate was stopped at one time. The stoppage of this rate through Knoxville to Nashville did not prevent the Nashville merchant from getting his goods at that rate, because they shipped over another route; and I think that the merchants of Knoxville to a great measure are not so prejudiced against this principle as they were at one time.

Senator DOLLIVER. In other words, they have gotten used to it?

Mr. SMITH. Well, if you want to put it that way, you can; but I think, in other words, they have allowed their good reason and better

judgment to prevail. I will say, in this connection, that we have here two representatives of another organization, the Commercial Club, of Knoxville.

The ACTING CHAIRMAN. From the same city?

Mr. SMITH. The president of that club is here.

The ACTING CHAIRMAN. From the same city?

Mr. SMITH. From the same city.

Senator DOLLIVER. Is there any complaint in the State of Tennessee about rates that are unreasonable and exorbitant in themselves?

Mr. SMITH. I do not hear any complaint, especially; I can not recall any.

Senator DOLLIVER. Is there any agitation on the subject of excessive railway charges in the newspapers of the State?

Mr. SMITH. No, sir; I do not think so. There is more or less grumbling on that subject.

Senator DOLLIVER. But, on the whole, they would rather take their chances with the railroads than with the Interstate Commerce Commission? Is that your idea?

Mr. SMITH. My idea is that the people generally rather acquiesce in the conditions as they exist. There is no great disturbance or clamor down there at the present time, and I believe that everyone who considered the question of giving this additional power to the Interstate Commerce Commission would be, as nearly all those that I have talked to are, opposed to it.

Senator DOLLIVER. Are they opposed to it because they are satisfied with present conditions?

Mr. SMITH. They are satisfied.

Senator DOLLIVER. Or because they fear that the Interstate Commerce Commission might give them a worse situation than they have now?

Mr. SMITH. They think it is a very far-reaching step to take, to absolutely give to this Commission the power to make future rates; and they realize, furthermore——

Senator DOLLIVER. Suppose that instead of doing that we simply give this Commission the power to adjudicate a complaint made as to the excessive character of a given rate. Suppose one of your people is not able to agree with the company as to what a reasonable rate is, and we give to the Interstate Commerce Commission simply the power to adjudicate that disputed question between the shipper and the carrier. Have they any objection to that?

Mr. SMITH. You mean to settle it finally?

Senator DOLLIVER. Yes; to settle it finally.

Mr. SMITH. I think they have great reason to say that that would be an unsafe course to take.

Senator DOLLIVER. What is your idea about settling a controversy of that sort?

Mr. SMITH. I think it should be settled just as is provided for by the laws at present—that is, by the courts of the land.

The ACTING CHAIRMAN. I believe there is nothing further. On behalf of the committee, I will state that we are much obliged to you.

STATEMENT OF MR. J. PIKE POWERS.

The ACTING CHAIRMAN (Senator CULLOM). Where do you reside, Mr. Powers?

Mr. POWERS. In Knoxville, Tenn.

The ACTING CHAIRMAN. What is your business?

Mr. POWERS. I am a manufacturer and jobber of clothing.

The ACTING CHAIRMAN. You may proceed and say what you have to say on this subject.

Mr. POWERS. I represent the members of the Commercial Club of Knoxville.

The ACTING CHAIRMAN. A different organization from the one of the gentleman who preceded you?

Mr. POWERS. Yes, sir. The lines represented by the members of the Commercial Club are as follows: Wholesale dry goods, wholesale boots and shoes, wholesale clothing, wholesale hats and caps, wholesale groceries, wholesale hardware, wholesale drugs, wholesale notions, agricultural implements, seeds, etc., printers and bookbinders, wholesale queensware, wholesale liquors, stoves and tinware, hosiery, machinery and electric supplies, manufacturing confectioners, wholesale furniture manufacturers, wholesale harness and saddlery, flour, meal, ship stuff, mantels, grates, tiles, trunks, traveling bags, cement, sewer pipe, manufacturers of pants and overalls, manufacturers of confectionery, bread, and cake, manufacturers of skirts. These are the different lines that are represented.

The ACTING CHAIRMAN. You represent a great many organizations or businesses?

Mr. POWERS. Well, sir, here are about one hundred firms that are members of this Commercial Club.

The ACTING CHAIRMAN. What have you to say with reference to this question?

Mr. POWERS. I have to say, sir, that our business extends from West Virginia through Virginia and the Carolinas and Georgia and Alabama and Mississippi and Tennessee and Kentucky, and many of our houses go beyond the Mississippi River into Arkansas, Indian Territory, and Texas, and some of them reach out to the islands of the sea, and most of their products are taken by those islands.

Formerly we have gone to South America, especially with our saddlery and harness. Our people have grown from a population of 9,000 inhabitants in the seventies to 61,000 people now, and we are still going on. With new railroads coming in, our population is increasing very rapidly, as well as our financial ability to support manufacturing industries; and these are springing up on every hand.

As the representative of this organization, I have heard nothing in recent years in the way of objection to our transportation facilities and the rates which they make for us. We have a very large trade in boots and shoes. They have a special rate from Boston to Knoxville. We have an immense trade in clothing. As I said just now, it reaches out to all this southern and southwestern territory; and yet I have heard no complaint from any source as to these rates as they are now fixed.

Some years ago I confess that I was very much dissatisfied myself, and I turned my shipments at one time from the Southern road, that goes directly from Bristol down through Knoxville, to the Seaboard

Air Line, because the rate on one was $1.15 and the other offered to bring our freight into Knoxville for a dollar. But when we got the rate at a dollar the Southern came to the same terms and delivered us our freight at a dollar; and since that time there has been no dissatisfaction that I have heard at all.

We feel that to take away the right of the railroad companies to fix or regulate the rates in connection with the Interstate Commerce Commission is subversive of the law of liberty; that if the National Government can take away the right which they, it seems to me, should enjoy as corporations, it has exactly the same right to come to me as a manufacturing corporation and say, "You must not take for this suit of clothes as much as $5, but you must sell it for $4.75."

I say that is the principle as it occurs to us. And then it seems to me—and I must speak very briefly—that it is very impracticable from a business standpoint, because we have such a diversity of interests as well as a diversity of communities, and these have their separate local advantages one over the other. If a fixed rate is made to apply to all of them, it seems to me it would be cause for endless legislation, and we should have turmoil and confusion. And if the pending bill, which has been passed by the House and is now in the hands of this committee, is passed, then, as I understand it, a decision reached by the Interstate Commerce Commission is operative at once. It goes into effect immediately, and leaves the public to suffer until the court of final resort shall have passed upon the matter. Hence, we are opposed to it. But I am not a lawyer. We have one of our members here who is a lawyer, and I shall be very glad for him to say a few words upon this point, as he represents very largely the interests of this commercial association.

The ACTING CHAIRMAN. May I ask if you have a resolution from your organization?

Mr. POWERS. Yes, sir. Our resolution, however, Senator, is almost the same in language as the other. I will read it, very briefly.

At the direction of the committee the resolution referred to was incorporated in the record at this point, and is as follows:

"At a called meeting of the executive committee of the Commercial Club Friday, May 5, the following was unanimously adopted:

"*Resolved*, That the Commercial Club of Knoxville, Tenn., is opposed to any legislation which will give additional powers to the Interstate Commerce Commission; and that, instead of additional legislation, they favor a strict enforcement of the present laws, known as the 'Elkins antitrust bill,' believing if this is done that the interests of the merchants, manufacturers, various communities, and the people at large will be fairly well protected.

"COMMERCIAL CLUB,
"J. PIKE POWERS,
"*President.*
"W. M. GOODMAN,
"*Secretary and Treasurer.*"

Mr. POWERS. On the back of this sheet, sir, is a list of the men whom we represent, and the firms and manufacturers.

The ACTING CHAIRMAN. We have been very much interested in your statement, Mr. Powers.

STATEMENT OF MR. CLARENCE W. BARBER.

Mr. BARBER. My name is Clarence W. Barber. I am a member of the Knoxville bar.

Members of this honorable committee, on behalf of this industrial organization, known as the Commercial Club of the City of Knoxville, I desire to enter a protest against this legislation, not because the legislation may not sometime be necessary, but because, as has been said by Mr. Powers, we do not believe in that section of the country that it is necessary at the present time. What is needed is execution and not legislation.

We also believe, honorable gentlemen, that the Townsend bill contains within its lines, or lurking between its lines, a principle which is subversive of the constitutional liberty of every citizen of this country—namely, to manage his own property and not have it managed by a commission clothed with powers such as are sought to be conferred upon the Interstate Commerce Commission by this Townsend bill, thus taking away from a man the right to regulate or use his property so that it shall produce to him a reasonable income. And right here, gentlemen, I wish to make use of and submit, if it may please this honorable committee, the brief of my good friend (though he was many years my senior), who is now deceased, and whom many of you were personally acquainted with, the Hon. James C. Carter, whose brief is set out in full in the great case of Smythe *v.* Ames, reported in 169 U. S. Supreme Court Reports.

Senator KEAN. Do you refer to James C. Carter, of New York?

Mr. BARBER. James C. Carter, of New York City. I think there is no brief in any of the cases that I have examined—and I have examined quite a number of them—that presents the question from a commercial and an economic point of view in a more able manner than does that brief of Mr. Carter's.

The ACTING CHAIRMAN. Does that apply exclusively to the question of the Commission's making rates, or is it on the general subject?

Mr. BARBER. On the general subject of the right of a man who has his property invested to a reasonable return upon that property. Of course we readily recognize that any property or any money that is invested in property devoted to a public or a quasi-public use is subject to a reasonable control of the Government, under what is known as the police power. However, we take the position that that police power can not be used in such a way as to constitute a deprivation of a man's property right, that is guaranteed to him not only by our United States Constitution, but by our several State constitutions. We also take the position, as has been said by my colleague, Mr. Powers, that this is subversive of a fundamental principle permeating our institutions, namely, that the power to regulate interstate commerce, as the United States Supreme Court has repeatedly said, not only constitutes the agency by which commerce is carried on (namely, transportation facilities), but it also constitutes the thing that is to be transported. If we did not have the thing manufactured that is to be transported, there would be no use of the facility. And for that reason we take the position that this statute which you have before you for consideration at the present time is not only bad from an economic and a social point of view, but because of the

stions that are involved, and that it ought not to be placed · statute books at the present time.

arisen before you, gentlemen, with some timidity, because uth that I may appear to be, and in fact am, and because of manner in which other questions have been presented here. ank you for your interest in this matter on behalf of the tion that I represent.

CTING CHAIRMAN. We are very glad to hear from you, and obliged to you for coming.

STATEMENT OF MR. Z. G. SIMMONS, JR.

CTING CHAIRMAN. Please give us your name, address, and

MMONS. My name is Z. G. Simmons, jr. My address is , Wis. I am a manufacturer.

CTING CHAIRMAN. You are a Northerner?

MMONS. I am from the State of Wisconsin, sir.

CTING CHAIRMAN. I thought you belonged to the same dele- the gentlemen who have just spoken.

MMONS. No, sir.

CTING CHAIRMAN. We will hear you now, sir, in whatever to say.

MMONS. I represent the Simmons Manufacturing Company. about $450,000 in freight, the bulk of which is high-class

r DOLLIVER. Annually?

MMONS. Annually. It is shipped to the Atlantic seaboard, ific coast, the Canadian frontier, the Gulf of Mexico, and liate points.

g the last ten years we have increased our business tenfold. es have increased 55 per cent. The average selling price of modity has decreased nearly 60 per cent. We have enjoyed transportation for our employees or ourselves—not a single rior to the passage of the Elkins bill we enjoyed a rebate of ,500 in the ten years. I am sorry to say that we have not per- lean skirts, and I would like to throw that $1,500 over the gton monument.

r CLAPP. There are causes to which you can devote it now, if .

MMONS. Yes; there are several of those. But I want to say believe this record would have been an impossible one had en unfair, unjust, and railway management unresponsive; y could not have been accomplished.

re opposed to putting the rate-making power into the hands mission, first, on account of its resulting in the concentration r in the hands of a few men. I do not think there are many our nation that realize what an immense thing this matter of upon rates is. As has been said here—I have heard it re- o-day—there are some thousands of people engaged in making I believe every agent at a local station is more or less of a rate that he appears in the interest of the shipper about 90 per the time, because his success is dependent upon the amount of that he can handle through his station. I do not believe that any academic scheme or any cut-and-dried plan of making a

rate. A rate is a purely business matter. A rate is made as high and as low as the maximum amount of business can be handled to both parties. If I can not produce so many tons of stuff the Northwestern road is not going to get it.

We have 1,600 feet of dock front on a beautiful harbor. We have not 16 cents worth of business for it, because we can do better on the railways. It is not worth anything to us. The Government spent $150,000 there, and they will not get it back in twenty years.

The ACTING CHAIRMAN. If that harbor were taken away from you, do you not think you would want to get it back again?

Mr. SIMMONS. Well, I can not tell that. I doubt whether it will ever be of any value to us.

Senator DOLLIVER. Did you state what you were manufacturing?

Mr. SIMMONS. We are making iron beds, brass beds, institution beds, springs, and cradles of all kinds. It is about 80 per cent metal work and 20 per cent wood work. It is high commodity stuff, difficult of shipment, hard to get a good carload of, or less than a carload. The only objectors that I know of in our State to our railways are Governor La Follette and Mr. Bacon.

The ACTING CHAIRMAN. They seem to have a pretty strong following there.

Mr. SIMMONS. They have; but you can create prejudice in almost any section of the country, the way things are drifting now. There is a semisocialistic spirit around, and it can be played to. That is pretty straight talk; but we do not want to see the rate-making powers taken out of the railways and put into the hands of a commission that will be scattered where we will have to go a long distance to see them and where there will be thousands of cases ahead of ours when the hundreds upon hundreds of men who have been brought up in the business, who have practically grown up from boyhood to manhood in their respective roads, are unable to-day to handle it. We believe their disposition is right. We believe that they intend to deal squarely, and our experience is that way.

The ACTING CHAIRMAN. So you think that the apparent excitement in your State is not real?

Mr. SIMMONS. I know it is not real; it has not a particle of foundation to rest on. There will be inequalities to be kicked on after you have made twenty commissions; and I do not care what is done, there will never be a time when jealousy will not exist in a man's heart. The man who is less successful than his neighbor, instead of looking to himself for his failure, is going to look for outside causes; and your commission will be buried with imaginary discriminations so that it can not attend to legitimate business.

The CHAIRMAN. We are very much obliged to you.

The committee thereupon adjourned until Tuesday, May 9, 1905, at 11 o'clock a. m.

TUESDAY, *May 9, 1905.*

committee met pursuant to adjournment.

sent: The chairman and Senators Cullom, Kean, Dolliver, , and Newlands.

EMENT OF WILLIAM M. ACWORTH, BARRISTER AT LAW, OF LONDON, ENGLAND.

e CHAIRMAN. Mr. Acworth, we recognize your position; would bject to having your statement appear in our regularly printed t of the hearings? Is there any reason why it should not, or you any preference?

. ACWORTH. I have no objection, personally, to seeing anything [may state here published in any form that it is customary. Be- n Washington as a member of the International Railway Con- , having been delegated by the British Government, of course I d like to make it as clear as possible that I speak for nobody but lf, and then only to the extent of placing before the committee information as to the history of English legislation as is in my ssion.

e CHAIRMAN. Your explanation is on record, and with that rstanding you may proceed.

. ACWORTH. I do not quite know what the committee desire to

e CHAIRMAN. The subject we have under consideration here, ant to a resolution of the Senate, is whether the rate-making r should be conferred upon a subordinate tribunal, the existing eing the Interstate Commerce Commission; whether the Com- on should be vested with power to review a rate made by the ads, and, if it should find that rate unreasonable or extortionate, ; aside and substitute a rate which should govern and control passed upon by the courts.

. ACWORTH. Would the committee wish me to give, as it were, a ected outline of the English railway situation, so far as it is con- d with legislation and executive control? Or would you prefer k me questions as to railway matters?

e CHAIRMAN. You may lead up to the present position—railroad tion—in England. Your statement will not be interrupted by the bers of the committee, but when you shall have finished it, per- some of the members of the committee may desire to elicit fur- information from you and interrogate you for that purpose.

. ACWORTH. I was afraid of taking more time in respect to the ry of English legislation than American conditions might justify.

e CHAIRMAN. I think I may say, on behalf of the committee, we have no fears of your trespassing on our time.

. ACWORTH. I should like to have the committee stop me when inks I am trespassing upon its time or when what I shall say cease to be of interest to the committee.

e first thing to which I desire to call attention, as affecting the rent conditions in America and in England, is that in England is no question of constitutional limitations; there is no ques- of States *v.* National Government. The English Parliament is ipotent—can do anything it pleases with the railways. That is aw and it is final. The courts have *nothing to* do but to interpret

it, to say exactly what Parliament meant, to arrive at the meaning (what Parliament has enacted—that governs absolutely and entirel

Senator CULLOM. In other words, the enactment of Parliament the law, and there is no question as to its constitutionality?

Mr. ACWORTH. It is as absolutely controlling in England as is tl Constitution of the United States in America.

From the beginning our railways have been controlled by maximu tolls. The original canal acts all confined the canal companies t certain charges for the use of the canal. In a similar way, when rai roads came every railway was confined to a certain charge for tl use of the railway. It was understood at the beginning that the cu tomer would carry on the railway just as he had carried on the cana That state of things disappeared at quite an early period. From an after 1830 there were maximum charges for the use of the rai ways and maximum charges for their service. Then, after a fe years, the two things got amalgamated and there was a maximu charge for the use of railway and carriage put together. Tho maxima existed in every act practically from the commencement (railways.

Railways developed and extended. For instance, the railway b tween Liverpool and London—with which, I have no doubt, many (the honorable members of the committee are familiar—was con posed originally of four or five separate railways, each with its ow schedule of maximum rates. But from a very early time the maxim though nominally existing, did not exert any practical influence.

The first important general act, I think, that affects English rai ways is what is known as the "cheap-trains act," which was intr duced by Mr. Gladstone as long ago as 1844. One consequence (that act was that it has regulated what is probably the most impo tant traffic existing in the world. I suppose a yearly traffic ($100,000,000 is carried at that one rate to-day. That act provide that one train per day should carry third-class passengers at 2 cen per mile, and the fact is that to-day in England every train carri third-class passengers at that rate.

Another provision of this act was that the State was to be entitled t take over any railways, constructed after the passage of the act, upc payment of interest on their whole capital at the rate of 10 per cen Naturally that act has not been put into force yet.

With respect to rate regulation proper, the first act was in 184 called the "railway clauses consolidation act," and it applies to ever new railway that is constructed. One clause of that act is known a the "equality clause," which requires that every railway compan shall charge the same rate for traffic carried the same distance und the same conditions. Practically no two kinds of traffic are carrie the same distance and under exactly the same conditions. Therefo a clause that merely insisted on equality when all the circumstanc were exactly the same had very little effect.

Nine years afterwards, in 1854, Parliament enacted what is know as the "railway and canal act traffic of 1854." Under that act tl railway companies were put under obligations, if the circumstanc were different, to make such a difference in the rates as was propo tional to the difference of circumstances.

The act of 1845 said circumstances being equal, charges should b equal. The act of 1854 said circumstances being different, the diffe ence is to be proportional to the difference of circumstances.

That act was left to be applied by an ordinary law court, the court of common pleas. That court, being an ordinary law court, showed, I think one may say, a considerable distaste for dealing with what were not strictly law questions.

It is, of course, familiar to this honorable committee that the question always raised is, What are similar conditions? What are differences of conditions, that justify a difference of rates? At the bottom that is not a legal question, but an economic or business question. From this point of view the court showed considerable distaste for these questions, and I think one may say did not encourage complaints of that kind to be brought before it.

Then after nearly twenty years, in 1872, there was an inquiry into this matter. There was considerable depression of trade following on very great prosperity at the time of the Franco-German war, and the traders grew restive, raised many difficulties, and there was an inquiry by a very strong parliamentary committee consisting of ten members, nine of whom were, had been, or afterwards became cabinet ministers. That committee recommended, and it was carried into effect by the act of 1873, the institution of a railway commission. That commission was not a legal court except in the sense that it could make binding orders; of its three members, two were laymen; there was one legal member, not of the standing of a judge, but the chairman was a layman.

One effect of that was that the railway companies particularly protested against being subjected to the jurisdiction of what they claimed to be an inferior court. Whenever they were defeated, as they frequently were, they took the case on appeal, or by writ of prohibition, or by various legal methods, before one of the ordinary law courts, and I think one might say that as a rule, certainly in many cases, they succeeded in upsetting the judgment of the commission.

Another point of very great importance, I think, in the act of 1873, was that it put the obligation upon the railways to publish every rate, perhaps not in the most effective way, but each railroad was compelled to keep at every station, from which it sent traffic, books showing the rates at which all traffic was carried and the conditions attaching to the rate. So that in England if a rate is complained of as giving undue preference, and it is found that somebody is getting a rate which is not published in the station rate book, it is taken by the commission as almost conclusive evidence that there is something unfair about the business, and no railway company would venture to be found charging a rate not in its public rate book.

There may be cases where a special rate—what you would call a commodity rate—is justified for a certain period. For example, if an aqueduct is being constructed in a thinly inhabited part of the country where cement and iron pipes are not easily found and at hand in large quantities, the railroad might give a specially low rate upon cement and iron pipes in large quantities, and then, after that demand for those articles has ceased, wipe out the rate entirely and go back to the prior rate. But, in general, all rates are published and available alike to everybody.

Then, there being a great many complaints, not only of the railway situation in general, but of the jurisdiction of the railway commission in particular, there was another inquiry in 1881–82 by a committee of the House of Commons, which lasted for many months, extending

over two sessions, and going into the whole question of railway rates. The upshot of that was a great deal of difficulty; many bills were introduced in Parliament year after year which did not get through.

Finally, in 1888, there was passed what is known as the "railway and canal traffic act, 1888." That act did, I think, four important things:

In the first place, it reconstituted the commission, and to get over the former difficulty that the legal member of the commission was not of sufficient status, it made the president of the commission a judge of the high court. There is one judge appointed in England, a second in Scotland, and a third in Ireland. The other two members of the commission are lay members. If the commission sits in England, the English judge presides; if it sits in Scotland, the Scottish judge presides; and if in Ireland, the Irish judge; and the other two members go to make up the court in whichever country the session is held. It was specially provided that upon questions of law, the opinion of the judge should prevail. The judge sits for five years, and then may be either reappointed or a successor may be appointed. When he is not engaged in the commission court—and he is probably not so engaged more than a few weeks in the year—he is doing the ordinary legal work of the country.

The jurisdiction of that court is, in the first place, interpreting the law as contained in private acts of Parliament, or, what is very frequent with us, "agreements" that are scheduled to private acts of Parliament and of course have the same force as if they were in the body of the acts. They also have jurisdiction to sit as arbitrators under certain circumstances.

I suppose the important matters from the point of view of this committee are questions of undue preference and enforcing reasonable facilities. In England we do not have many of those questions to deal with, because, you may say, the railway law has practically become known to the railway companies. Within pretty narrow limits the railway companies know how much power they have, what the court has held to be an undue preference, or what it would regard as a refusal of reasonable facilities, and they accommodate themselves to what they believe the court would decide if they were taken into court, and therefore cases do not often come before the court.

They also have a further power, which I shall mention later.

A second point which I think of special interest to the honorable committee, because it rests on American legislation, is section 31 of the act, which is known as the "conciliation clause." The then president of the board of trade, our minister concerned with the executive control over railways, had heard of the great success of the Massachusetts railway commission, and he endeavored to introduce something on the lines of the Massachusetts commission, but instead of appointing a special body he gave the jurisdiction to the board of trade itself. Section 31 provides that the board of trade, if anybody complains to them that the railway companies are treating them in an unfair or unreasonable way, may bring together the parties, the railway company and the complainant, and endeavor to settle the difference, by negotiation and conciliation, for they have no power whatever to enforce their decision. It is further provided that they shall report at intervals to Parliament the results obtained under that section. They have now reported to Parliament for more than ten

years. They have always said that that section has been of value, and it certainly has been of some value. If I might be allowed to say so, I do not think it has been of as much value as the Massachusetts legislation has been, for two reasons:

In Massachusetts the sitting of the commission is public and people who are interested (not necessarily parties, but who are concerned in such questions) attend the hearings, which are of themselves an education.

In the second place, the commission gives its reasons at great length, and naturally has to give reasons to justify its action. With us, the official of the board of trade who hears the case sits privately; he does not give any reasons; and practically his decision settles the matter only between the two parties, on the small question raised before him, because it is only small questions that are decided. If a big question were to arise, it would probably go forward without discussion before the board of trade to the railway commission, who have the power to compel. Naturally the railway companies say, "If this is going to be taken into court you can not expect us to show our hand to our opponents in advance, and therefore we will ask you to permit us to waive making our case before you, and reserve it until we get to the law court." So that it is only the small cases that are dealt with under that section of the act, and, for the reasons I have given, it certainly has not the same advantage in educating the public and bringing the railway and public nearer together that has been obtained by the procedure in Massachusetts.

Another point was an enactment that no increase of rates could be made without fourteen days' notice. I dare say that would be regarded as a very long period in America, where your circumstances are more fluid than ours, but when any railway proposes to make an increase it is bound to give fourteen days' notice before it can advance the rate.

Finally, the act of 1888 provided that the old maximum rates should be entirely repealed and recast. Elaborate machinery was provided, with which I need not trouble the committee. To get at that matter there was held a very long inquiry by two special commissioners appointed by the board of trade, who sat, I think, for one hundred and eighty days, and subsequently by a joint committee of the two Houses of Parliament, which sat, I think, for about seventy days. As the result of that, the whole of the maxima that had been contained in the different railway private acts passed in the preceding sixty years were abolished. There were said to be 3,000 different acts, each fixing different maxima of rates. They were all abolished, and there was a uniform and compendious schedule of maximum rates with a corresponding classification imposed for each company separately. The large companies had a schedule all to themselves, with a separate act of Parliament permitting it; the smaller companies were grouped, each group supposed to be under similar circumstances, and they had a rate applying to them.

So that every rate in England is now controlled by the fact that it has to be subject to the maximum contained in the act of Parliament affecting the particular railway.

The last of these acts was passed in the autumn of 1892, and the new maxima were to come into force in the beginning of the year 1893.

That only left the railway companies four or five months in which to recast the whole of the *rate schedules from* every point to every

point in the country. But I believe our schedules are perhaps more complicated than are yours, because I understand that in America the custom is not to make rates between practically every point and every other point, but to make rates only to basing points, and then to leave the local rate to be added to that. With us, the country being smaller, and conditions being more stable, it is common to put into the rate books through rates from every place of any importance to every other place of any importance. So that to recast this was exceedingly complicated and difficult.

When the 1st of January, 1903, came and the new maxima came into force, the railway companies had not finished the job, and the result was that in many cases the only instructions given to station agents were to charge the maximum rates. The maximum rates in some cases were nearly double the rates that had been previously charged for what you would call carload lots, and there was a tremendous uproar in the country. Parliament was appealed to, and the president of the board of trade stated publicly that he would bring the railway companies to their senses. A new committee of the House of Commons was appointed and heard evidence, and they were not apparently satisfied with the statements of the railway companies that they had not intended harm, but had only done what they had for lack of time. As the result of that committee's report a new act, the railway and canal traffic act, 1893, was passed, which imposed a new limitation of railway powers, that, with regard to any rate that had been increased under this procedure that I have described or that should be increased at any future time, if any member of the public complained, he could come before the railway commission, and the railway commission was not to allow the increase to take effect unless the company could satisfy them that there was good reason for allowing it.

So that you have the railway company subject in their charges to three checks:

First. The statutory maximum, which, of course, is not really much of a check; the statutory maximum is not likely to be charged except where there is no competition making a lower rate necessary, or where the traffic is coming in quite small quantities. So that the statutory maximum check is of no value except to local traffic for short distances and small amounts.

The second check is that the rates must not be such as to constitute an undue preference to one trader or to one district over another. Of course that can only apply as to an individual railway. It can not apply beyond what the particular railway does.

Third. The railway company must make no increase except for good cause, if anybody objects. Of course objection is not likely to come, in practice, except where considerable interests are involved.

Subject to those restrictions, the railways remain free to make or to vary rates as they please.

I may perhaps say, sir, that the secret rebate question is nonexistent with us. Of course, nobody can prove a negative. I do not think I have ever come across an individual who believed that there were in England any secret rebates that were of any practical importance. They may exist. If they do, probably the officials of the railway companies do not know of them. But, for practical purposes, the secret-rebate question is of no importance in England. I think there would be a universal agreement as to that.

We have had in England, as they have had in every other country, heroic proposals. At the time of the uprising of public opinion in 1893, there were proposals to hand over to a county court judge (who is our judge of first instance in civil matters) the power to say what was a reasonable rate. But these proposals have been argued pretty fully more than once before parliamentary committees, and they have never stood the test of argument. The history of the public control of railway rate-making in England may be said to be that Parliament has in a conservative and tentative way enacted from time to time specific measures for the cure or alleviation of such specific ills as were brought to their attention.

The CHAIRMAN. Have you concluded your statement, Mr. Acworth?

Mr. ACWORTH. That is all that occurs to me as relevant.

Senator CULLOM. It has been a very interesting statement of the case.

The CHAIRMAN. Has the commission any difficulty in making rates between localities, one locality claiming that it should have a rate equal to or less than another?

Mr. ACWORTH. Yes, sir; we have had on certain occasions questions of that kind. Perhaps I might instance one. I think the geography will be sufficiently familiar to the members of the honorable committee. The corn traders of Liverpool raised the question against the Northwestern Railway Company that it was carrying grain from Cardiff, which is attempting to develop a great importing trade, to Birmingham, which is of course a very important consuming center (a distance by the Northwestern, I think, of about 150 miles), at the same rate that they were carrying from Liverpool, a distance of 90 miles. The commission said the Northwestern is not getting any serious share of this traffic, and their going out of the business will not do any serious harm, for there are two other companies taking care of the trade between Cardiff and Birmingham, and they said the Northwestern were giving an undue preference. Thereupon the Northwestern went out of the Cardiff business, because they had to charge the same rate as their two competitors if they were to get any traffic.

The CHAIRMAN. What did the other roads continue to charge?

Mr. ACWORTH. The other roads continued to charge as before. If the court in England decides that a rate constitutes an undue preference between A and B, they may either put up A's rate or put down B's. But the Northwestern went out of the business. Then the Liverpool Corn Association tried a serious business; they attacked the Great Western, which was carrying freight from Cardiff, and from Birkenhead, which is practically a part of Liverpool, to Birmingham, and they said this was an undue preference, as Cardiff was 20 miles farther off.

The CHAIRMAN. Was that the commission or the court?

Mr. ACWORTH. The commission court, sir. The commission said, "This is serious; here is a big trade involved; this is going to upset the whole trade of the country; we do not find anything in the act of Parliament which obliges us to interfere with the whole competition of the trade of the country, and we will not do anything." I think that is quite typical of the attitude that has been adopted from time to time.

The CHAIRMAN. Do the railroads charge so much per ton per mile uniformly over the islands?

Mr. ACWORTH. No, sir; there is no such a thing as a schedule of rates in the British Isles. All you have is that at each station there is a statement—say at Washington there is a statement in the rate book, "New York, 220 miles; rate, class A, class B or C, or class 1 so much; Philadelphia, 130 miles; rate for each class, so much; or Baltimore, 40 miles so much;" and so on, to all the places to which the traffic is booked.

The CHAIRMAN. How do they reach the basis for determining those rates? Do they take distances into consideration?

Mr. ACWORTH. So far as this local traffic is concerned, you may say that unless there are other controlling factors, such as a shorter route by another road, the basis for local traffic in small quantities is kept at the maximum rate fixed by Parliament.

The CHAIRMAN. And the through rate?

Mr. ACWORTH. The moment they fix a long-distance rate or a rate for large quantities, it is a question of what the traffic will bear and nothing else.

The CHAIRMAN. A question of what the traffic will bear?

Mr. ACWORTH. Absolutely.

The CHAIRMAN. Is that acquiesced in by the commission?

Mr. ACWORTH. It is certainly acquiesced in by everybody except the person who thinks his particular traffic ought not to be asked to bear it.

The CHAIRMAN. Is the commission, on review, allowed to make a rate that will be, as we say, confiscatory—that is, that would destroy or prevent a proper return on the capital invested?

Mr. ACWORTH. The commission, you observe, sir, has no power to fix rates.

The CHAIRMAN. But to reduce the rates?

Mr. ACWORTH. Nobody has power to reduce a rate. The only thing they can do is to prevent a rate being increased. They can not reduce it, because if it is a question of undue preference (and that is the only way in which they can touch the height of the rate, provided it is inside the statutory maximum) the railway company may find it better worth its while to go out of the business altogether than to lower B to the level of A. But suppose that B is lowered to the level of A, then the court has nothing further to say. Our maximum rates are established by a law which says that these rates shall be the rates which the company is authorized to charge and make. Parliament has decided once for all that the maximum rates are reasonable, unless they become unreasonable from the fact that an undue preference has been created, or because the rate has been increased beyond what the company was charging before.

The CHAIRMAN. The companies hardly ever charge the maximum rate?

Mr. ACWORTH. Except for local traffic and short distances.

The CHAIRMAN. That leads me to ask this question: Have you what we call the "long and short haul" system—that is, charging less for a long haul than for a short haul?

Mr. ACWORTH. Yes, sir; we certainly do.

The CHAIRMAN. Will you illustrate that?

Mr. ACWORTH. There is a clause in our act of 1888 which I believe we also borrowed from America, which says, not that the company

shall not, but that the court shall have the power to order that the company shall not charge less for a long distance than for the short distance included in the long distance. I do not think the commission has ever been appealed to on this specific point, and, so far as I know, it is quite common for the short distance to be charged more than the long. Take a case where, for example, you have two competing roads and one common point, say 100 miles by the one road and 150 by the other; there the 150-mile road must charge the same rate as the 100-mile road or go out of the business. If it finds the distance is too long and too expensive, it goes out of the business; if it finds it worth while, it continues in the business, but it charges to the intermediate point beyond the 100 miles a higher rate than to the terminal point. But I think it tends toward a lower rate for the intermediate points between the 100 and the 150 miles.

The CHAIRMAN. That is the tendency?

Mr. ACWORTH. I think that is the tendency.

The CHAIRMAN. The local rates are higher than the through rates?

Mr. ACWORTH. Unquestionably; you may trace on a rate book on a road running 150 miles from London to Yarmouth, for instance the rates rising, say, to 110 or 120 miles and probably remaining, roughly, level, and then dropping at the 150 miles.

The CHAIRMAN. That is acquiesced in generally by the business world there? There are no complaints?

Mr. ACWORTH. As I say, I think I am sure that no case has ever been brought before the railway commission on that specific point.

The CHAIRMAN. Do you make through water-and-land rates, for instance, to some interior point through Liverpool?

Mr. ACWORTH. No, sir.

The CHAIRMAN. No joint rate?

Mr. ACWORTH. There are no ocean rates. There are a great many through land-and-water rates. Nearly all the English railway companies own steamships running to the different continental ports, and they make through rates to and from the continental points, but not to continental points inland. Of course, there are very large and important through rates from the interior of Ireland to the interior of England, and vice versa.

The CHAIRMAN. Does your commission have power to regulate through rates to continental ports with the land-and-water rate?

Mr. ACWORTH. Yes, sir. I speak without the act before me, but I think I am right in saying that the power they have is to provide that a person using the land portion of the journey only, or the sea portion of the journey only, shall not be unduly postponed or unduly treated in comparison with the person who is using the combined land-and-water route.

The CHAIRMAN. From the clear statement you have presented to us and from your writings on this subject, you have evidently studied this question. What, in your opinion, is the effect of governmental regulation of rates?

Mr. ACWORTH. I was present two or three days ago and heard the statement of Professor Meyer in reference to Germany, and it certainly entirely confirmed the conclusion at which I had arrived, that the German railways are in many ways very efficient, but have certainly, as the result of being under Government control, become so

stereotyped, as we might say, that they have certainly driven traffic to the water (a less efficient mode of carriage) that under ordinary circumstances might be carried with profit by the railways.

In England I think there is no question whatever but that the enforcement of the law with respect to undue preference has tended to prevent concessions that would otherwise have been given. The railway people have been afraid that the courts would regard as similar circumstances which they regarded as dissimilar, and therefore they have hesitated to make a reduction that they otherwise would have made, presumably with profit to themselves and to the traders. Whether the gain to the individual who is relieved, so to speak, from competition, counterbalances the injury to the community from the keeping up of the average rate, I do not know.

Since it has been decided that no rate can be put up once it has been put down, without appeal to the law courts, the railway companies have practically arrived at the conclusion that they will not put them down because they do not know whether they will have an opportunity to put them up again.

Senator CULLOM. Do you think it works to the advantage of the people that the railways will not put the rates down for fear they will not get a chance to put them up again?

Mr. ACWORTH. Personally I have no doubt it does not. It is fair to remember always that it may protect the weaker in commercial strife. It is rather hard on the weaker man to be crowded to the wall by a wholesale concern in any walk of life. But if it be true in ordinary business that, on the whole, the public gains by the wholesaling method, it is probably true in railway business also. I think that, so to speak, the heart has been taken out of the railway men. The railway men understand this business; they know how to manage it in their own way. The railway men think "the responsibility has ceased to be ours; we must maintain the status quo," and that is what they do.

The CHAIRMAN. You think that dividing responsibility impairs the administrative power of the officials of the roads as well as the service they render to the public?

Mr. ACWORTH. From the operating point of view, I do not think our railways have been sufficiently interfered with to prevent them developing the goodness of the service. But as to rate making, I have no doubt that the interference of Parliament, the courts, and the executive has all tended to stereotype and keep rates at an unnecessarily high level.

The CHAIRMAN. Would you say that, on the whole, the power to make rates generally and primarily should be left to the railroads and to the free play of the forces of the business world?

Mr. ACWORTH. Speaking as an individual student, I have no doubt that that is the process that will arrive at the best results for the community, with this exception: That I fully think it is necessary that the community in some way should interfere to protect all customers from unfair treatment.

The CHAIRMAN. You think that the power should reside somewhere to correct excessive and extortionate rates by summary and proper proceedings?

Mr. ACWORTH. I am not sure that I should go so far as to say

excessive rates regarded as excessive in themselves. I am myself inclined to think that excessive rates will correct themselves. The wise men will discover that it does not pay to charge excessive rates. But I think the law should interfere to prevent unfair rates to A as compared with rates given to B. It seems to me that the state is bound to insist that the rates shall be public, and that practically will settle it, for if they are public they have got to be fair; I am inclined to think the law should confine itself to securing that, where there is a difference made as between A and B, the difference should be a difference for a commercial reason, and not for any reason of personal favoritism.

The CHAIRMAN. We have tried to meet that difficulty by legislation. You have studied the railroad rates in the United States in comparison with foreign railroad rates, I take it. How do they compare as to charges for similar distances?

Mr. ACWORTH. I think we can beat you up to 20 or 30 miles.

The CHAIRMAN. Then what?

Mr. ACWORTH. Then the best guess we can give is that our rates per ton per mile are three times yours.

Senator FORAKER. You have no Government ownership of railways in England?

Mr. ACWORTH. Absolutely none.

Senator FORAKER. The railways are all held by private ownership; you have governmental control, however, of the character you have indicated?

Mr. ACWORTH. Yes, sir.

Senator FORAKER. So far as making rates is concerned, that governmental control is confined to prescribing a maximum rate for each railroad, is it?

Mr. ACWORTH. Subject broadly to the two other elements—seeing that rates are impartial as between customers and seeing that they are not increased without justification.

Senator FORAKER. The first thing they do, however, is to prescribe for each road a maximum rate, as I understand?

Mr. ACWORTH. Yes, sir.

Senator FORAKER. How do they arrive at what the maximum rate shall be?

Mr. ACWORTH. Originally it was put in practically as a copy of what the canals had charged, which naturally afterwards became entirely obsolete. The modern maxima that were put in, after the long and tedious contest I have described as occurring in 1891 and 1892, were on the basis of making it legal to charge what the railroads had been charging in the past.

Senator FORAKER. Then they did not arrive at what a maximum rate should be in a given instance by considering the cost of the property and the expense of operating, nor by destroying distances? They did not have any common basis, in other words, on which to figure out what the maximum rate should be?

Mr. ACWORTH. No, sir. They sat two hundred days, but they never attempted anything so elaborate as that.

Senator FORAKER. They merely took the rates the railroads had been charging up to that time and adopted them?

Mr. ACWORTH. Broadly speaking. There were cases in which there were sporadic rates that were above the ordinary, and the new maxima cut off the tops of a few of them. But, for practical purposes, yes.

Senator FORAKER. The railways, having these maximum rates fixed, can charge whatever rate they see fit up to that limitation, but can not go beyond it?

Mr. ACWORTH. Yes, sir.

Senator FORAKER. And I understand you to say that the effect of fixing maximum rates is to lessen the tendency to reduce rates, which railroads had practiced before this legislation was enacted?

Mr. ACWORTH. I am not quite sure that the maxima have really had very much effect at all. It has been a tendency, but I do not think an important tendency. But the interpretation by the courts of the undue preference law, and the recent limitation that having once reduced you can not subsequently increase, have had that effect markedly, I believe.

Senator FORAKER. So that the rates for the transportation of freight on railroads in England have not been declining, I take it from your statement, in recent years, but have remained practically stationary?

Mr. ACWORTH. I do not know what the average rate is, because there are no statistics in England; but my own impression would be that it had probably not declined to an appreciable extent, whereas in an earlier period it certainly did decline pretty fast.

Senator FORAKER. I understood you to say that the decline in rates which had been going on had stopped at about the time that maximum rates were established.

Mr. ACWORTH. I could not say that precisely, nor could anybody, because the statistics are not in existence. But I may put it this way: The way the average rate is reduced is not by a percentage reduction of all rates, but by the introduction of lower rates for considerable quantities, and therefore encouraging large traffic. There has certainly not been the same readiness to put in new low rates that there was in earlier years.

Senator FORAKER. You made another remark that I want to ask an explanation of, and that was that the rule which obtained in the fixing of rates in England by the railroads seems to be "What will the traffic bear?" Exactly what do you mean by that? Do you mean that the object of the railroads is to squeeze out of the business all that possibly can be secured from it?

Mr. ACWORTH. No, sir. In a little book that the Senator has been good enough to refer to I ventured to describe the process as "tempering the wind to the shorn lamb"—never charging a rate that the traffic can not bear.

Senator FORAKER. Your idea is that it is to the interest of the railroad not to charge the traffic any more than it can fairly pay; otherwise you would cut off the business?

Mr. ACWORTH. Yes, sir; broadly, I think that is the reason.

Senator FORAKER. But at the same time it is your idea, in "tempering the wind to the shorn lamb," to get just as near to what it will bear, without cutting it off, as you can?

Mr. ACWORTH. No, sir; with respect, I think not; because in Eng-

land, certainly, to begin with, it does not pay a railway, as a rule, to keep high rates, because it does not develop the traffic. But, in the second place, suppose that a railway company did such a thing; there is unlimited capital available for new railways in England where they can be operated at a profit, and we should very soon restore the balance in such a case by putting in a new railway.

There was a case that was rather famous a dozen years ago in the coal district of South Wales, where there is an enormous and profitable traffic in coal for export from Cardiff. There was one railway running to the port of Cardiff, and it had paid for a good many years a dividend of about 16 per cent. The traders said: "You are charging more than is reasonable." They said: "Well, we like 16 per cent, and we propose to hold on to it." Thereupon the traders themselves went to Parliament and got power to build a new railway; and the first railway does not pay 16 per cent any more.

Senator FORAKER. They took out a new charter and built a competing line?

Mr. ACWORTH. Yes, sir.

Senator FORAKER. And that is the way they remedied that trouble?

Mr. ACWORTH. Yes.

Senator FORAKER. And it was that experience, or other similar experiences, that you had in mind, I suppose, when you told us a while ago that you thought excessive rates cured themselves in the course of time?

Mr. ACWORTH. That is one of the methods. I think really the more important one is that the railway company appreciates that in its own interest it can not afford to charge unreasonable rates, for if it does it keeps its district out of the business, and the district of the adjoining company gets the business that its district would otherwise have had.

Senator FORAKER. How long is the longest line of railway in England?

Mr. ACWORTH. Do you refer to main lines, sir?

Senator FORAKER. Yes.

Mr. ACWORTH. The longest main line in the hands of one company is 327 miles long.

Senator FORAKER. And they range down to shorter distances—how short is the shortest one, perhaps?

Mr. ACWORTH. Of the companies that we recognize as important companies, there are some that have no haul, probably, of more than 80 miles.

The CHAIRMAN. Right there, will you permit me to ask the name of the longest line? What is the name of the longest line, Mr. Acworth?

Mr. ACWORTH. The company I was speaking of as having the longest main line, sir, is the Great Western. It is not the most important. The most important main line, I think, would be that of the Northwestern, from London to the point where it crosses into Scotland, at Carlisle, and hands the traffic over to its allied company. That is 300 miles.

The CHAIRMAN. But as a system, how much has the Northwestern—or what did you call it?

Mr. ACWORTH. The Great Western has about 2,500 miles, and the Northwestern, I think, nineteen hundred and something—between 1,900 and 2,000.

The CHAIRMAN. The whole system?

Mr. ACWORTH. That is the whole system, sir.

The CHAIRMAN. That includes the allied roads in Scotland?

Mr. ACWORTH. No; we have nothing corresponding to your controlled systems. That is absolutely a homogeneous system, entirely owned or worked by the Northwestern or Great Western.

The CHAIRMAN. In different ownership, too; or is the ownership the same?

Mr. ACWORTH. The Great Western——

The CHAIRMAN. It is the same corporation?

Mr. ACWORTH. The Great Western is a corporation with 2,500 miles of track; the Northwestern is another corporation with 1,950 miles.

The CHAIRMAN. In the system?

Mr. ACWORTH. Yes, sir.

Senator CULLOM. That is all one system, owned by one party?

Mr. ACWORTH. Yes, sir.

Senator CULLOM. One company?

Mr. ACWORTH. Yes, sir.

The CHAIRMAN. But that does not include the branches and the mileage of the lines of the allied companies in Scotland?

Mr. ACWORTH. Yes, sir; that includes all the branches of each of the companies.

The CHAIRMAN. And sidings, and mileage in Scotland, and everywhere?

Mr. ACWORTH. Oh, no, no, no! They have nothing in Scotland. They do not pass the frontier. It does not include sidings; no. That is what we call "running lines." You would have to multiply it by at least 3 if you took it as miles of track, because the great bulk of our line is two-track, and the amount of sidings is very great.

Senator NEWLANDS. This is miles of single track, is it?

Mr. ACWORTH. No, sir.

The CHAIRMAN. How many systems are there in England?

Mr. ACWORTH. We generally speak of 14 big companies. For practical purposes there are perhaps 20 or 25; but there are a great many little, tiny lines, some of them with half a dozen miles.

Senator CULLOM. What is the total railroad mileage?

Mr. ACWORTH. Twenty-two thousand miles of route miles, and about 50,000 miles of track—that is, including sidings.

Senator FORAKER. What is your opinion as to the general effect of prescribing these maximum rates? Has it been beneficial to the shipper, or otherwise?

Mr. ACWORTH. I do not think, sir, the maxima have any importance whatever in relation to wholesale traffic. The only person they protect, if they do protect him, is if you or I want to send a few hundredweight of some goods from one local station to another. That is the only case in which they apply.

Senator FORAKER. In local business and on short hauls?

Mr. ACWORTH. Local business; short hauls; small quantities.

Senator FORAKER. Where there is no competition, practically?

Mr. ACWORTH. Partly that, and partly where the traffic is expensive. I have no doubt in many cases the result of the maxima is that this expensive local business is done at a rate which does not represent a reasonable profit.

Senator FORAKER. That is all.

Mr. ACWORTH. The profit is made up by charging more than would otherwise be charged on large consignments for larger distances.

Senator CULLOM. Mr. Chairman, I did not think of anything at the time my name was called; but I would like permission to make one inquiry while I think of it.

The CHAIRMAN. Proceed.

Senator CULLOM. You say that part of the rates out in your country are three times what they are here?

Mr. ACWORTH. That is my guess, sir; it is only a guess.

Senator CULLOM. Probably three times?

Mr. ACWORTH. Of the average rate. I am taking your rate at the figure the Senator in the chair gave as 7 mills, and I am multiplying it by 3; and I have no doubt that our English rate is at least as high as that.

Senator CULLOM. Your labor is cheaper than it is in this country, is it not?

Mr. ACWORTH. I should think in the ratio of 60 to 100—something of that kind.

Senator CULLOM. I am a little at a loss to account for how it happens that you are charging so much more for your transportation than we are here.

Mr. ACWORTH. Well, sir——

Senator CULLOM. Can you account for it?

Mr. ACWORTH. Yes; that is, exactly how much of it is accounted for I do not know, but in the main it is clearly accounted for by two reasons. Leaving out the question of how much influence legislation has had, the main commercial reasons are that your average haul is over 140 miles, and ours is probably about five and twenty. Therefore you have got to charge the terminal cost both for services and for work, which is a very large portion of the total cost, onto 25 miles of haul instead of onto 140. That is one cause; and the second cause is that whereas your normal consignment is probably a carload or some number of carloads our normal consignment is probably three or four hundredweight; and it is vastly more expensive to deal with small quantities. A great deal of our business is what is done with you by the express companies; and we think we are cheaper than your express companies.

Senator CULLOM. So that practically the short distances and the small quantities result in the difference between the cost of your transportation and ours?

Mr. ACWORTH. I have no doubt that that is the great cause.

Senator CULLOM. And that difference would seem to exist not only as between this country and yours, but between this country and almost all the European countries, would it not, so far as your observation goes?

Mr. ACWORTH. Not at all to the same extent, sir. For example, in Prussia—I do not know whether the committee has had the information as to the average rate, but it is available, and it is certainly very

much higher than in America—in Prussia the average haul is, I think, about 80 miles. England is quite exceptional in the extreme shortness of haul.

Senator CULLOM. Still, the rates are higher in those countries than they are here?

Mr. ACWORTH. Oh, yes, sir.

Senator CULLOM. That is as I understand it.

Mr. ACWORTH. But I rather meant that though the rates were higher that fact can not be accounted for in Prussia either by the haul being short, because it is not—it is more than three times ours—nor by the fact that the traffic is sent in small consignments, because it is not. The great bulk of the Prussian traffic is sent in wagonloads.

Senator CULLOM. Your judgment, as I understand you, is that whatever regulation you have had there has been of advantage to the country. I refer to regulation by Parliament in the passage of laws. Am I correct in stating that as your view?

Mr. ACWORTH. I do not think I put it as strong as that, sir. I say that I think it must be recognized that regulation is unavoidable—I would even say desirable; but I think a good deal of our regulation, and certainly the recent regulation preventing a railway from raising a rate when it is once lowered, is very much against the public interest. I also think that the legislation in regard to undue preference in the degree to which the courts have carried it is against the public interest. It prevents the wholesale principle being applied where, on commercial grounds, it ought to be applied.

Senator CULLOM. It absolutely prevents any difference as to bulk, do you mean?

Mr. ACWORTH. No, sir; it does not go as far as that, but—well, of course, one can only judge by what the commission court has decided in the individual case; but the tendency with us of the commission court has been not to allow anything like the difference between the wholesale rate and a retail rate that is recognized not only by the practice of the railway companies in America but by the rates fixed by the Prussian government in Germany. I believe we make less difference between wholesale and retail rates than any other country in the world, and I do not think that is in the interest of getting generally low rates.

Senator CULLOM. At the head of this commission—do you call it a commission in your country?

Mr. ACWORTH. Strictly, sir, it is a commission court.

Senator CULLOM. A commission court; the chairman of the commission court is a judge, I believe you said?

Mr. ACWORTH. Yes, sir.

Senator CULLOM. Is he a trained lawyer?

Mr. ACWORTH. Oh, he is one of the judges of the high court.

Senator CULLOM. And is he placed at the head of this commission because of his judicial qualifications and the position that he holds?

Mr. ACWORTH. Yes, sir. It rests with the lord chancellor to appoint one of the twenty-odd judges of the high court in England to act as the chairman of the commission for a period of five years, and at the end of that period he either retires and is replaced or continues.

Senator CULLOM. And in all law questions his decision is final? Did I understand you to say that?

Mr. ACWORTH. It acts a little peculiarly, sir, in all cases that, in the opinion of the commission, are questions of law; and the commission may, perhaps, go wrong on the fact of what are questions of law.

Senator CULLOM. But still it stands?

Mr. ACWORTH. That is the law, sir.

Senator DOLLIVER. I want to ask just a few questions, if it will not weary Mr. Acworth. We have had a good deal of difficulty in getting any value out of the comparison of rates per ton per mile in these various countries, and you have intimated that there are no statistics of that sort in England.

Mr. ACWORTH. I am sorry to say not, except in the case of one railway, which has seen the error of its ways and has taken to compiling them in the last two years.

Senator DOLLIVER. If all we have heard is correct, they are wasting their time. Now, what I want to get at is a comparison between actual rates on similar quantities over similar distances in the United States as compared to England; and I would like you to go into the actual rates charged, for example, on dressed meat from the seaport to London or Birmingham, so that we can compare them with the rates for similar distances in this country in similar carload lots.

Mr. ACWORTH. If I may be forgiven for saying so, sir, I am quite sure that nobody ever can make a comparison of that kind. The whole question is, Are the conditions similar? I will undertake to say that if you will tell me whether you want America brought out at the top or England brought out at the top, I will produce the figures to suit you.

Senator DOLLIVER. But there is a rate upon a carload of dressed meat from Liverpool to London, for instance?

Mr. ACWORTH. Yes, sir.

Senator DOLLIVER. Now, what is that rate?

Mr. ACWORTH. Well, that is a very famous rate in England. There is a rate of 25 shillings a ton in carload lots from Liverpool, which means American meat. If you were sending from the local station, where you would be sending English meat, the first station out of Liverpool on the road to London, you would be charged 45 shillings; and the English farmers say that is not fair.

Senator DOLLIVER. Has that question been brought before the commission?

Mr. ACWORTH. Yes; a very similar question was brought before the commission half a dozen years ago in relation to the rates charged for American bacon in train loads from Southampton to London as compared with the rates charged for English bacon in one side, perhaps, or one pig, from the local stations between Southampton and London. In that case, after a very long and very careful hearing. the commission came to the conclusion that it was not an undue preference; that the conditions justified the railway companies in charging a rate that you may say was, roughly, $1.50 per ton for the large quantities the whole distance of 78 miles as compared with about $3 or $3.50 for a less distance on the small quantities.

Senator DOLLIVER. Do you think it would be impossible to compare the actual carload rates upon flour or breadstuffs and meats in England and this country for similar distances? That would enable me to get at some kind of a comparison between the two.

Mr. ACWORTH. Oh, of course, sir, it would be possible to take a rate that would be charged for flour a hundred miles out of New York (supposing you sent it back from New York to Albany) and to take a similar distance in England, but I do not think it would really fairly convey any impression of what the rates were at which the traffic of the country was ordinarily done. Our flour, for example, largely comes in by water to the different ports, and it is distributed from the different ports within a radius of probably, as a rule, not more than 30 or 40 miles.

Senator DOLLIVER. How large a proportion of the heavy traffic, such as coal and lumber, in England is conducted by rivers and canals?

Mr. ACWORTH. If you leave out such rivers as the estuary of the Thames up to London, and do not count that as a river, but merely take canalized rivers, there is only one case where anything serious is done, and that is the case of a canal about 20 miles long that falls into the Humber. That, I believe, carries several millions of tons a year; but, broadly speaking, our canals are dead or dying.

Senator DOLLIVER. Your coal and heavy traffic, then, is carried practically exclusively upon railways?

Mr. ACWORTH. Or by the coasting vessels. The coasting trade is quite important. The bulk of the coal, the larger proportion of the coal, comes into London by sea.

Senator DOLLIVER. So that in calculating this average rate per ton per mile, all that enormous, heavy traffic is excluded from the railway statistics?

Mr. ACWORTH. The heavy traffic?

Senator DOLLIVER. The heavy traffic.

Mr. ACWORTH. That is carried on the sea?

Senator DOLLIVER. Yes.

Mr. ACWORTH. Oh, that would not be in the figures, except so far, of course, as the railway would carry it. That coal comes mainly from two places, near Newcastle or near Cardiff, in Wales—either Wallsend coal or Welsh coal; and it is carried by the railway perhaps 6 or 8 or 10 or 20 miles down to the port, and then shipped.

Senator DOLLIVER. It is pretty evident from what we have heard here that our rate per ton per mile on the average shows a low rate, for the reason that the great bulk of the traffic upon many of our railroads is coal, for instance.

Mr. ACWORTH. Not as large a proportion as ours, sir. In ours something like three-fifths of the total traffic is coal. Ours is a much larger percentage than yours.

The CHAIRMAN. What is the rate on coal from Wales to London, we will say, and the distance, per ton?

Mr. ACWORTH. May I give you a rate, sir, that I think I know more accurately? In the case of the Derbyshire coal field, which is the nearest coal field to London, I suppose the average distance would be 150 miles, and the rate is just about 150 cents.

The CHAIRMAN. One dollar and a half a ton?

Mr. ACWORTH. Yes, sir. Yes; it is just about a cent a mile. There are very few rates with us that go below a cent a mile.

The CHAIRMAN. A cent a mile?

Mr. ACWORTH. A cent a mile.

The CHAIRMAN. But on coal it is a cent a ton a mile?

Mr. ACWORTH. Oh, it is vastly more in many cases.

The CHAIRMAN. In many cases; but that is the lowest, is it?

Mr. ACWORTH. I could not say that, sir; but it is nearly the lowest. I do not believe you would get anything below 8 mills, as far as I know.

The CHAIRMAN. On coal?

Mr. ACWORTH. As far as I know.

The CHAIRMAN. And how high? That is the lowest. Now, what would be the highest per ton per mile, if you will just state that?

Mr. ACWORTH. Probably the highest would be in such cases as this: Some of the collieries around Newcastle ship after a land carriage of about 6 miles; and I should think—well, I had a case the other day within my own knowledge in that district where I think the coal was carried about 3 miles, and the rate was 6 pence, 12 cents. But of course that is very exceptional.

The CHAIRMAN. Yes; but on longer lines, what is the ordinary rate?

Mr. ACWORTH. When you get what we call a long haul (which would be anything over a hundred miles), I should think if you said it would be 12 mills, probably, or something of that kind, 10 to 12 mills, that would be about right. It is only a guess, sir, because, as I say, there are no average figures available.

The CHAIRMAN. Mr. Dolliver, you may proceed.

Senator DOLLIVER. Just one more question, Mr. Acworth. What is the standard railway dividend in England?

Mr. ACWORTH. Perhaps the best way of putting it is this, sir: The return on the whole of the capital that stands in the accounts is, I think, at present, about 3½ per cent, or something of that kind; the average on the ordinary shares, on the common stock, would probably be a little over 4; but I am speaking off the book.

Senator DOLLIVER. Is there any public supervision of the original capitalization of railroads in England, and of additions made to the capitalization from time to time?

Mr. ACWORTH. Yes, sir; no railway can ever issue one farthing's worth of capital, or ever could, without authority of a special act of Parliament prescribing exactly how much it may issue.

Senator DOLLIVER. And when they desire to make a new issue of capital stock they have to apply to Parliament?

Mr. ACWORTH. They have to get a special act from Parliament for the purpose; I do not think Parliament scrutinizes it in the case of the established companies; it almost goes as a matter of course; but the control is there.

Senator DOLLIVER. What is the basis upon which the roads are accustomed to add to their capital stock? Upon what basis, and upon what showing of fact to Parliament, are these additions to the stock made?

Mr. ACWORTH. If an established and respectable company went to Parliament and asked for power to borrow a million, the evidence would be this: "Mr. So-and-so" (general manager of the railway company), "is this sum necessary?" "Yes, sir;" and that would be all. But of course you are liable at any moment to be challenged, and you would then have to explain what you wanted it for. A new rail-

way company, on the other hand, has to submit to Parliament an estimate of the cost of construction of its road, sworn to by the engineer who is responsible. He specifies so much for bridges, so much for rails, so much for purchase of land, and so on in detail; and he has to make oath to the truth of that statement. Suppose the amount required according to the estimate for actual construction is $1,000,000. Parliament then allows share capital to be issued to the extent of a million dollars, and one-third more, $333,000, to be issued in what we call debentures, or in what you call bonds.

Senator DOLLIVER. Has there been any tendency to the consolidation of the English railway lines?

Mr. ACWORTH. It has pretty well worked itself out, sir; existing railway companies—the big railway companies—represent probably 50 or 60 small ones each.

Senator DOLLIVER. You spoke of a road running from London to Carlisle?

Mr. ACWORTH. Yes, sir.

Senator DOLLIVER. And there connecting with an allied line?

Mr. ACWORTH. Yes.

Senator DOLLIVER. What is the basis in England of such an alliance as you refer to there?

Mr. ACWORTH. Absolute freedom of the railway companies to make what alliances they please.

Senator DOLLIVER. It is not an alliance of interest?

Mr. ACWORTH. Not in the sense of there being any joint stock holding—absolutely not.

Senator DOLLIVER. Is the holding of stocks in one railway system by another railway system known in England?

Mr. ACWORTH. Only to the extent that if a particular important company desired to support an extension in its own territory which it might not for some reason desire to make in its own name, it would get power from Parliament to subscribe a certain percentage of the stock of the small company. But of one trunk line in another, it is quite unheard of.

Senator DOLLIVER. Still, the territory is divided practically among these great trunk lines?

Mr. ACWORTH. No, sir; because practically there is no important traffic that two or three companies do not compete for. The territories are interlaced.

Senator CULLOM. But no railroad can be built through any territory without the consent of Parliament as to the line?

Mr. ACWORTH. No, sir.

Senator NEWLANDS. Mr. Acworth, how do you account for the difference in capitalization between the English roads and the American roads? I understand that the English roads are capitalized on the average for about $200,000 a mile.

Mr. ACWORTH. More than that, sir.

Senator NEWLANDS. And in this country on the average of about $60,000 a mile.

Mr. ACWORTH. Ours is about $250,000.

Senator NEWLANDS. Two hundred and fifty thousand dollars a mile?

Mr. ACWORTH. Yes, sir. In the first place, sir, an English railway is a much more complete machine than yours. It has two tracks instead of one. It is altogether better equipped. It has big stone stations where you have wooden shanties in the country, and altogether it is a much more elaborately equipped affair. If I may take up the question of mileage, your Interstate Commerce Commission reports 200,000 miles of route mileage, and the total track mileage is 270,000. In other words, for each mile of route you have a mile and a third of track. For each mile of route in England we have 2¼ miles of track. That is one reason why it is more expensive. No doubt, also, your railroads, especially of late years, have piled on enormous amounts out of revenue that we should have provided out of capital.

Senator FORAKER. Do you mean $250,000 a route mile?

Mr. ACWORTH. A route mile, sir.

Senator NEWLANDS. In your country the railroads either go under or over the highways, do they not?

Mr. ACWORTH. Practically always.

Senator NEWLANDS. Which makes an additional expense, does it not?

Mr. ACWORTH. Yes, sir. Another point that makes a great difference in the capitalization is that in America your lines have gone through periods of receiverships and have written down their capital enormously. Our railway companies have never had that unfortunate experience, and they have all the capital still standing on their books that they ever created.

Senator DOLLIVER. We have been accused in this country of writing them up occasionally.

Mr. ACWORTH. I suppose it is a very small matter compared with the writing down, in any case.

Senator NEWLANDS. In your country does the capitalization of your roads as a rule represent money actually invested, or does it represent in many cases what is called, in this country, "water?"

Mr. ACWORTH. Of course nobody can answer that question fully, sir, because nobody knows altogether what happened in the old days. There was undoubtedly a good deal of something very like water in the old days. But for many years past I have no doubt it has substantially represented sovereigns.

Senator NEWLANDS. Whenever an application is made by one of these railroads to Parliament for power to increase its capitalization, either in bonds or in stock, the assumption is in either case that the money will be actually paid in?

Mr. ACWORTH. Oh, yes; absolutely.

Senator NEWLANDS. And paid out in improvements on the road?

Mr. ACWORTH. Yes; and very likely it will be paid in in the shape—take the Northwestern Railway, whose shares stand at 160; the shareholders will be privileged to get 100 pounds of stock if they subscribe 150 sovereigns.

Senator NEWLANDS. So that they are obliged there to subscribe in excess of the——

Mr. ACWORTH. No, they would not be obliged; that would be the way that the railroad company would carry it out. There would be no obligation.

Senator NEWLANDS. Yes. Now, what is your system of taxation of railroads? Is it a simple system or a complex one?

Mr. ACWORTH. I do not know whether you would believe me if I said it was more complicated than the American system, but I believe it is. Practically, the State taxation does not amount to anything; it is only a tax on passenger traffic carried at first-class fares. That is not important. But the locality charges rates on a railroad company on this basis: Take a particular township in which there is a mile and a half of line, we will say; and it is supposed that you will ascertain what an outside bidder would pay for the privilege of making what profit he could on these 1½ miles of line. Of course it is really an insoluble problem; nobody can tell what 1½ miles of a trunk system, cut loose by itself, is worth. But that is the problem that they attempt to solve with us; and the solutions do not always agree.

Senator NEWLANDS. Is the tax in the shape of a certain percentage upon a valuation?

Mr. ACWORTH. Having ascertained the valuation by the process I have tried to describe, they then charge the railway company the same as any other ratepayer in the district, whatever it may happen to be. It may be 5s. in the pound, or it may be 10s.

Senator NEWLANDS. Does that valuation per mile ever approximate the actual capitalization per mile?

Mr. ACWORTH. The railway companies say that it is more than it ought to be. Perhaps the best way to illustrate is this: There are many cases where, in a particular township, a railway company which has in that township a mile and a half of track pays 90 per cent or 80 per cent of the whole rates of the township.

Senator NEWLANDS. On that small amount of road?

Mr. ACWORTH. On that small amount of line, with no station, or anything but the track.

Senator NEWLANDS. But I understood you to say that the capitalization of the roads in England on the average was about $250,000 per mile?

Mr. ACWORTH. Yes, sir.

Senator NEWLANDS. In valuing those roads for taxation do they ever approximate that value? Is it not very much less?

Mr. ACWORTH. It is a very complicated process, sir. You have to deduct all kinds of things before you begin to value. Really, I could not give it.

Senator NEWLANDS. You could not tell me what the valuation per mile is?

Mr. ACWORTH. For taxing purposes?

Senator NEWLANDS. Yes.

Mr. ACWORTH. No, sir; because there is none. It is different in each different township.

Senator NEWLANDS. I see. Now, suppose the Great Western and the Northwestern roads should desire to consolidate; could they do so without the action of Parliament?

Mr. ACWORTH. Oh, no; not possibly.

Senator NEWLANDS. Are such things as holding companies known, where companies are organized simply for holding the majority of the stock of two or three different railway companies?

Mr. ACWORTH. Practically such a thing is not known, and I do not think you would find it easy to make it under the English laws. Certainly there has never been any attempt to make it.

Senator NEWLANDS. You say that the maximum rates are fixed in the case of each railroad company by a schedule attached to the act?

Mr. ACWORTH. Yes, sir; and they are often different for different parts of the system of the same company.

Senator NEWLANDS. Do I understand you to mean by that that the rate from every place on that particular line to every other place on that particular line is fixed in the act?

Mr. ACWORTH. No, sir.

Senator NEWLANDS. Or that some standard is fixed for determining those matters?

Mr. ACWORTH. The act fixes a mileage basis; it says you may charge so much per mile for the first 20 miles, you may charge a less sum per mile for the next 30 miles, a less sum per mile for the next 50 miles, and so on. That is fixed for each class of traffic according to a classification that is given statutory force.

Senator NEWLANDS. I see. So that really the maximum rates there are distance rates?

Mr. ACWORTH. Yes, sir; the maximum rates.

Senator NEWLANDS. Now, as to the classification; how many classes have you?

Mr. ACWORTH. Eight.

Senator NEWLANDS. And how are they designated?

Mr. ACWORTH. Class A, B, C, moving upward, and class 1, 2, 3, 4, and 5.

Senator NEWLANDS. How are classes 1, 2, 3, 4, and 5 distinguished from the ones indicated by letters? To what classes of freight do they apply?

Mr. ACWORTH. The lettered classes are what we call station-to-station things—such articles as would naturally be loaded and unloaded in the open air. Class A is coal; class B is, say, pig iron; class C is, say, tiles. Then classes 1 to 5 begin with goods of greater value, likely to go in smaller quantities and needing to be dealt with under cover generally. Say class 1 would be raw cotton and class 5 would be dress velvets and cigars.

Senator NEWLANDS. And those rates go up also?

Mr. ACWORTH. Those rates go up.

Senator NEWLANDS. In each case they go up?

Mr. ACWORTH. Yes, sir.

Senator NEWLANDS. The custom in your country is to issue simply debentures (which constitute a mortgage, I believe, upon the road) and then stock?

Mr. ACWORTH. Not a mortgage, sir. You can not mortgage a road, because it is devoted by act of Parliament to being run as a road by the people to whom Parliament has intrusted it. It is an obligation to pay if there is any net revenue from which to pay; and if there is not it gives the right to the debenture holders to put in a receiver to manage the property and see if he can get anything out of it for them. It is rather peculiar.

Senator NEWLANDS. The debentures, then, would correspond to our preferred stock?

Mr. ACWORTH. No; I think they correspond more nearly to your bonds, without a power of foreclosure. They are a first charge. Practically, of course, they are more secure in the average than the American bond.

The CHAIRMAN. What we would call income bonds, I suppose?

Mr. ACWORTH. Well, yes, sir; if you were to say so from the legal point of view; but from the practical point of view they are a better security than almost anything in the world. There is practically nobody who ever thinks of a debenture not being secure. The debentures of the big railways are almost as valuable as the securities of the British Government.

Senator NEWLANDS. Are those debentures in the hands of the holders subject to taxation in England?

Mr. ACWORTH. They are subject to the income tax.

Senator NEWLANDS. But there is no valuation tax on the debentures themselves?

Mr. ACWORTH. No, sir. All the expenses of our local government are raised by a charge on the property, the physical, corporeal property, in the place.

Senator NEWLANDS. The tax is upon the property of the corporation, and both the debentures and the stock are exempted from any property tax and are subject simply to the income tax to which you refer?

Mr. ACWORTH. They are exempt from tax in the hands of the company, because the Government takes it in the form of income tax from the individual holder.

Senator NEWLANDS. Yes. Now, you say the rate of interest upon that debenture is about 3½ per cent?

Mr. ACWORTH. I should guess that is about right. Anyway, it would not be more than that if we were raising them to-day.

Senator NEWLANDS. Yes.

Mr. ACWORTH. That, or something less than that, would probably roughly correspond to par value.

Senator NEWLANDS. Would such a debenture be above par—stand in the market above par?

Mr. ACWORTH. I ought to know, sir, but I do not. Three per cent debentures of the Northwestern stood at 113 a few years ago. All prices have come down since then.

Senator NEWLANDS. The rate of interest upon the stock is a little over 4 per cent, is it—from 4 to 4½ per cent?

Mr. ACWORTH. That is my recollection.

Senator NEWLANDS. That is upon the par value of the stock, as I understand?

Mr. ACWORTH. Yes.

Senator NEWLANDS. Does the stock which pays continuously such dividends stand at higher than par?

Mr. ACWORTH. In the present condition of the London money market you can buy the ordinary stocks of the first-class railways at a price to pay nearly 4 per cent. Two or three years back you could not buy them to pay more than 3¼, or between 3¼ and 3½ per cent.

Senator NEWLANDS. Is there any limitation imposed by the acts incorporating railway companies upon the dividends of such companies?

Mr. ACWORTH. There are one or two survivals that contain it. They never come into operation, however.

Senator NEWLANDS. Do you remember what limitations were imposed in those cases?

Mr. ACWORTH. There was one that, I believe, was 6 per cent; but the company never earned it while it was an independent company, and now it is absorbed in another company; and it would be quite impossible to say what that portion of the system had earned. But for practical purposes there is nothing of the kind.

Senator NEWLANDS. You were speaking of the difference between the rates prevailing in England and those prevailing in this country; and you stated that, notwithstanding the cost of labor was lower there than here, the rates were higher. Is not that due to the fact that you have a very much larger capitalization per mile?

Mr. ACWORTH. Yes, sir.

Senator NEWLANDS. And that you are obliged to pay interest upon that large capitalization?

Mr. ACWORTH. Yes, sir. Yes; I ought to have included that as an additional reason; certainly.

Senator NEWLANDS. How is it with reference to the operating expenses of your English companies? Do you remember what percentage they constitute of the gross receipts, on the average?

Mr. ACWORTH. I think the last figure is between 62 and 63; but it has gone up considerably of late years.

Senator NEWLANDS. In this country I believe it is about 65 per cent?

Mr. ACWORTH. Yes, sir. Ten years ago we used to consider that you operated at 66, on the average, and that we operated at about 54. The gap has been closed up very much in the last few years.

The CHAIRMAN. Right there, do the English roads include taxes in their operating expenses, or not?

Mr. ACWORTH. Yes, sir; it includes everything short of interest on your debentures and dividends on your stocks.

Senator NEWLANDS. Is there any other fixed charge besides the interest charge that constitutes a part of the operating expenses? I presume not.

Mr. ACWORTH. The interest charge is not in the operating expenses.

Senator NEWLANDS. No; I mean is there any other fixed charge besides the taxes that constitutes a part of the operating expenses?

Mr. ACWORTH. There are, of course, rents payable to other companies whose lines are leased, for example.

Senator NEWLANDS. Would they constitute a part of the operating expenses?

Mr. ACWORTH. That would depend on how they were made by act of Parliament. It is quite common to make it a charge on operating expenses, because it gives the company that consents to lease its line a pretty nearly absolute certainty of getting its money; but it is not always so.

Senator NEWLANDS. Do you have in England such statistics as we have here, compiled by the Interstate Commerce Commission, regarding railways?

Mr. ACWORTH. Yes, sir; we have a volume of statistics compiled by the board of trade, on very different lines.

Senator NEWLANDS. On different lines?

Mr. ACWORTH. Yes. I mean it is quite a different form of return from yours.

The CHAIRMAN. Do your roads deliver the freight after it arrives at destination to the consignees? Is that included, if they do, in the charge?

Mr. ACWORTH. The normal theory, sir, is that in cases of traffic in what we call the numbered classes, 1 to 5, the rate includes collecting from the consignor and delivering to the consignee.

The CHAIRMAN. Delivering from the station to the consignee?

Mr. ACWORTH. Yes.

The CHAIRMAN. In the city—London city?

Mr. ACWORTH. Also collecting the freight from the sender and bringing it to the station.

The CHAIRMAN. Yes; bringing it to the station?

Mr. ACWORTH. Yes.

The CHAIRMAN. That is the freight?

Mr. ACWORTH. Yes, sir.

The CHAIRMAN. And then for delivery to the consignee anywhere, say, in the city of London?

Mr. ACWORTH. Within what is called "the free cartage area," which practically includes the business part and the central part of any important town.

The CHAIRMAN. That is a charge made by the railroad?

Mr. ACWORTH. It is included in the one rate that is charged.

The CHAIRMAN. In the freight charge?

Mr. ACWORTH. Yes, sir.

The CHAIRMAN. Speaking of the cost of your railroads in the first instance, is not that cost increased largely by or made up materially from the difficulty and expense of entering cities and even traversing your country districts, which are so thickly populated?

Mr. ACWORTH. Oh, yes, sir. Of course the cost of land must be infinitely more per mile with us than with you.

The CHAIRMAN. Yes, sir. Now, I believe you said the price on beef from Liverpool to London, a distance of 175 miles, is $6 per ton?

Mr. ACWORTH. It is 200 miles, sir—$6.25.

The CHAIRMAN. I believe from Chicago to New York, 1,000 miles, it is $8?

Mr. ACWORTH. Yes. Well, our rate is complained of, not that it is high, but that it is too low.

The CHAIRMAN. Not by the consumer?

Mr. ACWORTH. Not by the consumer, but by the farmers along the line, who say that it is an outrageous injury to them, because they pay practically double per ton per mile

The CHAIRMAN. On theirs?

Mr. ACWORTH. Yes, sir.

The CHAIRMAN. They do, on their local beef?

Mr. ACWORTH. Yes, sir.

The CHAIRMAN. And this is the through beef from America?

Mr. ACWORTH. Yes. Of course it is fair to remember, sir, that the rate includes, unless I am much mistaken, collection from the ship's side at Liverpool and delivery to the cold-storage warehouse in London.

The CHAIRMAN. Both local and through?

Mr. ACWORTH. I think so, sir. I have very little doubt it does, but I do not know positively.

The CHAIRMAN. The distance is 200 miles, you said?

Mr. ACWORTH. Yes; at least, 191, I believe.

The CHAIRMAN. Yes; 200 miles. Now, one more question: I believe you have in England shareholding companies that are permitted to own shares in everything and in anything, in American railways as well as in European and British railways?

Mr. ACWORTH. Yes, sir; there are plenty of them.

The CHAIRMAN. Of large capitalization?

Mr. ACWORTH. No; I do not think there is any of any great importance.

The CHAIRMAN. What is in the way of these shareholding companies buying up all the stock of the London and Northwestern or Great Western—anything?

Mr. ACWORTH. There is a good deal of it to buy, sir.

The CHAIRMAN. Suppose there was money there to buy it, though, could they not buy it and hold it?

Mr. ACWORTH. Yes, sir. There is a company that at this moment has bought some five or six million dollars, I think, or something of that kind, of Northwestern shares.

The CHAIRMAN. I asked you that question to meet the other question where you said that there were no holding companies in Great Britain.

Mr. ACWORTH. There is no company constituted as a piece of railway diplomacy to control a railway company. That is what I meant, sir.

The CHAIRMAN. No; but the shareholding companies would if they bought the majority of the stock of one of these two roads?

Mr. ACWORTH. Yes; but I mean it is done by the companies that do it—and I only know of one that has done it to any serious extent—primarily as a financial operation, and not with any idea of controlling the policy of the railroads in which they invest.

The CHAIRMAN. But if they happened to find themselves one morning with a majority of the stock, would they not be apt to put on the board of directors those men that they wanted there? If one of these shareholding companies was to find itself on a given day owning a majority of the stock of these two great lines, would it not be pretty apt to elect at the next board meeting the board it designated?

Mr. ACWORTH. Well, sir, that really is not within the range of practical politics. The Northwestern, for example, has 40,000 ordinary shareholders, and the average holding is probably a few hundred pounds; and by the time you had bought enough of Northwestern stock to get control of the Northwestern board you would put the stock up to such a price that no financial company would look at it.

The CHAIRMAN. We used to think that; but the stock of the Northern Pacific here once went to $1,000 a share for a few days.

Mr. ACWORTH. Yes, sir. I do not think there was much bought and sold at that price, was there, sir?

The CHAIRMAN. Well, not a great deal; no. But I thought that these shareholding companies, if they had the money, could buy up all the railroads of Great Britain.

Mr. ACWORTH. I think the real difficulty is that the stock is held entirely for investment purposes and by small shareholders all over the country.

The CHAIRMAN. I have only one other question. Do you remember what the railroads have to earn per mile to meet the fixed charges and interest on a road, say, that cost $250,000 a mile?

Mr. ACWORTH. If you take it this way, the average cost being a quarter of a million dollars, the fixed charges are limited normally to a quarter of that, and therefore it is interest on $60,000 a mile, at, say, 4 per cent, after you have paid your operating expenses. But our shares, certainly our preference shares, and even our ordinary shares in the great lines are regarded as almost as much an obligation as the bonds. Nobody ever thinks of a company passing its dividend, or anything of that kind. They go on much the same, decade after decade.

The CHAIRMAN. That concludes what we have to ask you, Mr. Acworth, and I want to state, on behalf of the committee, that we thank you very much for the statement you have made and for the aid you have rendered us in the investigation of this important question.

Mr. ACWORTH. I am much obliged to you, sir. I would like to state, parenthetically, that I came here with the intention of stating what were more or less undisputed facts, and I am afraid I have expressed a good many opinions; and I would like to say as plainly as I can that they affect nobody on earth but myself.

STATEMENT OF MR. ROBERT W. HIGBIE.

Mr. HIGBIE. My name is Robert W. Higbie; I live in New York, and I am engaged in business also in the State of West Virginia.

I am sent here at the request of two organizations—the National Wholesale Lumber Dealers' Association, which is composed of something over 300 firms in 25 States and Canada, and the New York Lumber Trade Association, which embraces in its membership practically every wholesale and retail lumber dealer in the metropolitan district. Because of the fact that there has been an occasional statement that those associations and individuals that were in favor of additional power being conferred upon the Interstate Commerce Commission were not altogether serious and were composed of agitators rather than business men, I would like to state that among our membership we have railway directors, we have bank officers, we have men who are investors in bonds and stocks of the railroad companies and actually own railroads, so I think it is not an exaggerated statement to say that we are a representative body.

At the annual convention of the National Wholesale Lumber Dealers' Association, which was held in the city of Philadelphia in the month of March, the following resolutions were adopted. They are very short. I will read them to you and file them with your secretary. They cover almost entirely the ground upon which we ask that increased powers be given to the Interstate Commerce Commission:

Resolutions adopted by the National Wholesale Lumber Dealers' Association.

NEW YORK, *March 2, 1905.*

Whereas the item of transportation vitally affects every line of business; and

Whereas the factor of competition among the carriers is now in process of elimination by the consolidation of railroad systems; and

Whereas reasonable, equitable, and staple freight rates are absolutely essential for the fullest development of legitimate business enterprises of the country; and

Whereas the common carriers and the people are so interdependent upon each other as to make their interests in the transportation problem mutual; and

Whereas by virtue of this mutuality of interests it is essential that the question of regulation of common carriers by the National Government should be dealt with in a broad and intelligent manner and in a spirit of absolute justness and fairness to all interests: Therefore be it

Resolved by this association, That in view of the public character of the business of common carriers, it is but fair to the people and also to the carriers themselves that the National Government should reasonably and conservatively regulate the transportation charges of common carriers so as to avoid discrimination between individuals, localities, and communities; and that this association favors national legislation, which will not fairly prevent the legitimate development of railroads as servants of the people, yet of sufficient potency to amply protect the shipping public from unjust and unreasonable rates, rules, and regulations, and to secure absolute justness and fairness as between the shipping public and carriers; and

Be it further resolved, That this association strongly commends the recommendations made by President Roosevelt in his message in dealing with the great transportation problem; and

Be it further resolved, That a copy of these resolutions be sent to the President and the chairman of the Committee on Interstate and Foreign Commerce of the United States Senate and the House of Representatives.

Respectfully submitted.

LEWIS DILL,
President, Chairman Committee on Railroads and Transportation.

Attest:
E. F. PERRY, *Secretary.*

I have carefully followed the arguments as presented by the railroad officials and their friends before this committee during the last two or three weeks. They have devoted a good deal of time and a good deal of argument to matters to which I would not take the slightest exception. As a matter of fact, in a large measure I agree with all that has been said by the railroad men. It does seem to me that they have absolutely missed the one essential feature of this question. They have devoted lots of time to proving that the average railroad rate is lower than in any other country in the world. There

is no doubt about that; that is admitted. But I can not see how that proves anything. We might say that the average man is honest, and therefore we should abolish courts of justice. It does not prove anything. We might say that because these rates are lower, no additional power is necessary; but how is it going to help the man who has an unreasonable rate if a neighbor or a locality has a lower rate? The average between the two might be low enough, but the unfortunate man or the unfortunate community that has the high rate is at the mercy of the railroad.

The thing that we ask for, and the thing upon which we base our whole claim, is just this one thing: In all the arguments that have been made the railroads insist that they not only shall make the rates in the first instance, but that they shall make them in the last instance. That we object to. We have not the slightest objection—we think it is fair and we think it is right that they should make the rates in the first instance. I think it is the only proper way. The gentleman who preceded me gave a most intelligent talk, and one that I enjoyed, that was full of interest, that was full of information, but it would be practically impossible for Congress in this country to follow the rule which Parliament in England follows—the making of a maximum rate for every locality over every road.

We say that the present method of making rates is right; that the railroads should make them in the first instance. We simply ask that transportation, which is a commodity, shall be treated exactly as every other commodity is treated in this country, and that is this: If I sell a man a carload of lumber for a certain price, when that lumber has reached its destination if my customer says that I have not performed service that is worth that charge the courts, if necessary, step in and, by a judge and twelve men, say what is the value of that particular car of lumber. There may not be a lumber man on that jury, but that does not make any difference. The State reserves the right to fix the price of my lumber in certain instances, and those instances are where there is an honest difference of opinion.

We ask you to treat the railroads exactly in the same way. Transportation is a commodity. Where there is an honest difference of opinion as to whether the charge for a particular service is reasonable or unreasonable we ask that somewhere, in some place, there be a court, a body, or somebody who can say what is reasonable. We say it is not fair, it is not just, it is un-American that a party to a lawsuit should decide his own case.

At this point the committee took the usual noonday recess.

AFTER RECESS.

Senator CLAPP (in the chair). You may proceed, Mr. Higbie.

Mr. HIGBIE. I appreciate the fact that these hearings have been very extended—that the matter has been gone into very extensively. I also think there will be no disagreement that the time has been very well spent. The railroad question, by and large, is a very big question; it is a question which demands the best attention of the best experts in this country.

In order, however, to concentrate my remarks, with your permission I will accept the railroad side as contained in a brief which was

filed and prepared by Mr. Spencer, president of the Southern Railway, and Mr. Wilcox, president of the Delaware and Hudson Canal Company. Not that it is any better than the rest, but because it is in comprehensive form and has been available.

Senator CLAPP. Are those before the committee?

Mr. HIGBIE. They were filed——

Senator CLAPP. I mean have they been incorporated as part of the hearings?

Mr. HIGBIE. I think they have not been filed with the Senate committee, but they have been filed with the House committee.

Senator CLAPP. Go on.

Mr. HIGBIE. The brief, as presented by those two gentlemen, devotes a large part of the beginning of it to the act itself. We all know that the act to regulate commerce was passed nearly twenty years ago, and it would be a most remarkable thing if at the end of twenty years no amendments were found necessary. Unless I am mistaken, there has really been but one important amendment to the act to regulate commerce since it was first passed. That amendment is the act which bears the name of the chairman of this committee, and is known as the Elkins Act.

The original act was more or less of an experiment, and, as a matter of fact, it is stated on good authority that no one yet knows what the act to regulate commerce, as passed in 1887, means. That being the case, it is not remarkable, I say, that we should come here and ask that that act should be further amended and that the weak spots in it should be strengthened.

One of the great points upon which our railroad friends lay great stress is the one that the proposed legislation would depreciate the values of railroad stocks and bonds. Senator Depew, in making a public address in the city of New York before the chamber of commerce, expressly declared that, in his opinion, this was not so. At the time that this question was being fully discussed before the House committee, and just about the time that the bill known as the Esch-Townsend bill was passed by the House, the Southern Pacific Railroad Company advertised one of the largest issues of bonds that has ever been advertised by a railroad in this country. Those bonds were sold and brought the best net results of any bond issue which has ever been offered to the public of this country.

I think that those two facts conclusively prove that there is nothing in that part of the argument which tends to show that depreciation of stocks and bonds has actually taken place.

Our railroad friends further lay great stress upon the assertion that the conferring of additional powers upon either the Interstate Commerce Commission or some other properly constituted body would deprive the railroads of property without due process of law. We have seen that phrase used over and over again in the arguments that have been brought forth by our friends.

They go even further, and say that this legislation would be confiscatory in its nature.

They go still further, and say that the powers which we are asking are too vast; that no body of men could properly be endowed with such powers as are proposed by the Esch-Townsend bill to be conferred upon the Interstate Commerce Commissioners.

Now, gentlemen, what are the facts? These powers are being used to-day. Somebody passes upon all questions. The fact of the matter is that the persons who pass upon these questions to-day are the railroad people themselves, and it rests with the Congress of the United States to say whether or not this power shall continue to be exercised by the railroads themselves, or whether it shall be placed in the hands of men who are unbiased and who are competent to perform these duties.

With your permission I should like to introduce here an extract from an editorial printed in the New York Sun on the 26th of December last. I think that nobody, by any stretch of imagination, could accuse the New York Sun of being unfair to corporation interests or to the rights of private property. The editorial is entitled "President Roosevelt and railroad rates." I will simply read this extract:

The President says that he believes that "as a fair security to shippers the Commission should be vested with the power, where a given rate has been challenged and after full hearing found to be unreasonable, to decide, subject to judicial review, what shall be a reasonable rate to take its place." While the determination of "reasonable rates" for railway transportation of given commodities is somewhat more complex than the adjustment of market prices of cotton or cheese, this proposition in itself is open to no reasonable objection. It merely raises a point of equity. It simply says that if full evidence is submitted to a competent board that a chartered public carrier is taking an undue and improper advantage of the public, or of any part thereof, legal steps may be taken for the protection of the public against its extortions. This is in every way right and reasonable and is open to no proper exception.

The question really resolves itself into just this one thing: Shall Congress use the power, which it unquestionably has, to place in the hands of some properly constituted body the right and the duty, in case a rate or any regulation or practice of a railroad is challenged, after full hearing, after giving the railways and the shippers full opportunity to present their case—shall Congress, I say, delegate this power to somebody to say what is right and what is reasonable and what is just?

Under the present arrangement, if I understand it correctly, the courts have the right to decide whether a given rate is reasonable or not. Let us suppose, for a moment, that a complaint has been filed with the Interstate Commerce Commission, that the case has been carried to the highest court, and that the court has decided that a rate is unreasonable. Where are we at? Nobody has the right to say what is a reasonable rate except the railroad officials themselves. We ask that that power be taken from the railroad officials and placed in an unbiased body.

Suppose a rate has been declared unreasonable, and suppose the railroads express a willingness to substitute a reasonable rate, is there any likelihood that they could agree among themselves?

I will give you an illustration from my own personal experience, which will take but a moment and is absolutely true. Some thirteen months ago I discovered that a railroad had made a clerical error—an overcharge of $25 on a carload of lumber. I called the attention of the general freight agent of the initial road to this error. He came back by return mail and said that I was right; to file my claim for the overcharge with the delivering road and that the refund would be properly made. Now, it has been thirteen months since I

received the letter from the general freight agent, and it is only within ten days that I have been notified by the agent of the delivering road that he had been able to get the connecting lines to participate in that refund.

If it takes thirteen months to get four or five railroads to agree upon a proper division of $25, how long will it take the railroads to agree among themselves upon a new rate which the court has declared unreasonable? I think that is a proposition which nobody can answer.

The railroad people say that rebates are the greatest evil to which the business is subjected. That reminds me of an old saying that it takes two to make a quarrel. It also takes a party of two to make a rebate, and the railroads have it in their own hands to stop all rebates simply by saying they are stopped, because if the railroads do not grant the rebates the shippers can not get them, and it rests with the railroads themselves to say that no rebates shall be made.

I would like to say just one word in relation to private car lines, private terminals, etc.

It has been suggested that these corporations, which are independent of the railroads, should be placed under the supervision of the act to regulate commerce. Granting that that has been done, is there any power anywhere lodged to compel these private car lines and the owners of the private terminals to make a proper charge for their service or to institute proper regulations and practices? Should we not be in exactly the same condition as we are to-day in regard to other rates, regulations, and practices? Should we not run up against the stone wall we have been up against year after year, that there is nobody with power to correct?

We have a body that has been very severely criticised—Interstate Commerce Commission. I am not here to defend them. It is not my province. But I say, in all soberness, and I say in all earnestness, that we have lost some of the best men that ever sat upon the Interstate Commerce Commission because they said that, after spending days and weeks and months in arriving at what was a fair and just conclusion, their conclusion was not worth the paper it was written upon.

Senator DOLLIVER. To whom do you refer?

Mr. HIGBIE. If I am not mistaken, Judge Cooley retired from the Commission because he got discouraged. I also think that a gentleman from Illinois, Mr. Walker, did the same thing.

Senator DOLLIVER. Did not Judge Cooley go into a circuit court of the United States as a judge?

Mr. HIGBIE. I am unable to answer.

Senator DOLLIVER. Do you recall when he resigned or left the Commission?

Senator KEAN. Mr. Walker resigned and went to the Atchison, Topeka and Santa Fe road.

Mr. HIGBIE. I simply made that statement upon information and belief.

Senator FORAKER. Judge Cooley stated on a number of cases that the Commission did not have this power and that it would be impossible for them to undertake to exercise it.

Mr. HIGBIE. That referred, I think, to the power to make rates in the first instance, did it not?

Senator FORAKER. I do not know. It was in connection with changes that they were asked to make in rates, on the ground that they were unreasonable. I only mention that to show you that probably you are mistaken in attributing Judge Cooley's resignation to the fact you have stated.

Senator CULLOM. Judge Walker was employed by the railroads or syndicate of railroads after he resigned his position as Commissioner.

Senator KEAN. And received a salary of $25,000.

Senator CULLOM. He certainly received a salary two or three times as large as he had been getting.

Senator KEAN. Then he was elected president of the Santa Fe system.

Mr. BACON. I think the gentleman Mr. Higbie refers to was Mr. Clements, who was on the Commission five or six years ago, and, after serving, retired. I have heard it stated repeatedly that the reason for his retiring was that he found he was wasting his time.

Mr. HIGBIE. There is just one more feature of this question to which I wish to call your attention.

The proposition to confer this power upon the Interstate Commerce Commission has been criticised on this ground: That it would not be possible to get men with sufficient knowledge and with sufficient expert experience to determine the questions that would come before the body. I think that when that assertion was made this fact was overlooked: That in all proceedings before the Interstate Commerce Commission, or any other commission which might have this power, the railways would have the right and the privilege of introducing all the expert witnesses that they could find anywhere in the United States. If that criticism against this proposed legislation is to be effective, it would apply not only to that body, but it would apply to our courts. It would apply practically to every public body in the United States. Nobody for one minute would assert that everybody knows it all. If that were so, it would not be necessary for the Supreme Court of the United States to have any arguments. It would not be necessary for attorneys to appear before that body and expound the law or their views of the law. The judges of that court would know all things from the beginning.

The same would be true of the Interstate Commerce Commission or any other commission to which this power would be given. They would not be supposed to know it all, but they would be supposed to listen to the evidence introduced, and it is probable that they would be men of sufficient mental caliber to pass upon any legal question which might be brought before it.

I want to thank the committee, and I think the thanks of every person in the United States are due to the members of this committee, for the painstaking care and the valuable time which they have given to the consideration of this question. Since the question has begun to be discussed we have had a great many things cleared up. We are getting very much nearer together, and I have faith enough to believe and do believe that the wisdom of this committee will produce some measure which will be fair to both sides of this question, which will

protect the interests of the railroads and at the same time give the shipper proper redress where proper redress is needed.

I want to thank you for your attention.

The CHAIRMAN. Does that conclude your statement, Mr. Higbie?

Mr. HIGBIE. Yes, sir.

The CHAIRMAN. I thought you complained of rebates and discriminations in your statement.

Mr. HIGBIE. In the resolutions?

The CHAIRMAN. Yes; in the resolutions, or in your general statement.

Mr. HIGBIE. I think, Mr. Chairman, while you were out of the room that question was mentioned by me in this way: That it takes two parties to make rebates; that the railroad officials have it in their own power to stop rebates any time they choose.

The CHAIRMAN. But the petition, I think, said that. That is my remembrance, at all events. What I want to get at is, would the power to fix rates conferred upon the Commission in any way correct rebates and discriminations?

Mr. HIGBIE. I think it would not, any more than a law to make all men honest would be effective.

The CHAIRMAN. We have a very stringent law on the subject of rebates and discriminations already.

Mr. HIGBIE. Yes, sir.

The CHAIRMAN. And if anything could be suggested to make that law stronger the committee will be glad to have the suggestion made.

Mr. HIGBIE. I think the act known as the "Elkins Act" is as strong as the English language can make it, and if that does not accomplish the result it is simply, as I said, we can not make men honest by legislation.

The CHAIRMAN. You are doing business in West Virginia. Do you know of any case of excessive rates in your business or in the business of the companies with which you are associated?

Mr. HIGBIE. I know of two.

The CHAIRMAN. Did you take those before the Commission?

Mr. HIGBIE. I took one of them before the Commission.

The CHAIRMAN. What was the result?

Mr. HIGBIE. The result was this, and I almost hesitate to state it, because there are lots of things you believe that you can not prove: Something like four years ago a complaint was filed before the Interstate Commerce Commission, not in my name, but in the name of the association which I represent, complaining that the rates on lumber by the Norfolk and Western to New York City were unreasonable and discriminated against shippers by that road in comparison with the rates given by parallel roads—the Baltimore and Ohio and the Chesapeake and Ohio.

The CHAIRMAN. Discriminated against their own shippers?

Mr. HIGBIE. Yes, sir.

The CHAIRMAN. That is, charged higher rates for the same distance than were charged to shippers by the Chesapeake and Ohio and the Baltimore and Ohio from the same points?

Mr. HIGBIE. Yes, sir. As a matter of fact the rate charged by the Norfolk and Western to New York City was 27½ cents a hundred, while from similar points on the Baltimore and Ohio and Chesa-

peake and Ohio the rate was 21½ cents, a difference of 6 cents. And that was for the same distance and for the same service.

The CHAIRMAN. But the Baltimore and Ohio did not reach the particular point, did it?

Mr. HIGBIE. Not the initial point, but the delivering point. The Commission heard the case and decided that the complaint was well founded.

The CHAIRMAN. And then what happened?

Mr. HIGBIE. The Commission issued an order that the rate from points on the Norfolk and Western be reduced to 25 cents, and the railroad then put the new rate of 25 cents in force.

Senator KEAN. But that was not the rate you wanted?

Mr. HIGBIE. No; I asked 22½ cents.

The CHAIRMAN. Was that case carried to the courts?

Mr. HIGBIE. The case was not carried to the courts, because the railroad obeyed the suggestion of the Commission.

The CHAIRMAN. What was the other case?

Mr. HIGBIE. The case I referred to is still in existence, although no complaint has been filed that I am aware of. At the time that the Norfolk and Western reduced its rate to 25 cents to New York, in order to be perfectly fair to all New England points the Boston rate should have been reduced to correspond to the rates of the other roads. The Boston rate of 29½ cents is still in force, although the rate of both the Chesapeake and Ohio and the Baltimore and Ohio to New England is 23½ cents. That case has never been complained of.

I simply mention that because some of our railroad friends go so far as to say that there are no unreasonable rates in existence, or, at least, they imply that.

There is one other rate which is being imposed on lumber. The rate from Chattanooga to Buffalo by way of Cincinnati is 20 cents; from Chattanooga to Cleveland it is 23 cents, going over the same road and in the same direction with a shorter haul. The association which I represent has taken this matter up with the officials of the road, and we have asked them for information, and, strange to say, we can never get a reply to our letters; apparently the letters are lost in the mails.

The CHAIRMAN. Do you think the conditions are the same?

Mr. HIGBIE. They go over the same road and in the same direction.

The CHAIRMAN. Not over the same road?

Mr. HIGBIE. I was speaking of the road from Cleveland and Cincinnati to Buffalo.

Senator DOLLIVER. What road is that?

Mr. HIGBIE. All the roads have the same rate from Chattanooga.

Senator DOLLIVER. Is that freight hauled through Cleveland to Buffalo?

Mr. HIGBIE. Yes, sir.

Senator DOLLIVER. At 20 cents?

Mr. HIGBIE. Yes, sir.

The CHAIRMAN. But you say the Norfolk and Western makes the rate first?

Mr. HIGBIE. Not from Chattanooga. I was speaking of the New England rate. I have no complaint to make about the Norfolk and Western. The New England people do complain, though they have

never carried the complaint to the Commission. I will state that the case which did go there was four years in reaching a conclusion.

The CHAIRMAN. What is this particular complaint about Chattanooga?

Mr. HIGBIE. That the rate on lumber to Buffalo from Chattanooga by way of Cincinnati is 20 cents, and to Cleveland it is 23 cents, and we have written to the railroads asking for information as to the reason for that difference in rates, but as yet we have never been able to get any response to our letters.

Senator NEWLANDS. You said it took four years to reach a conclusion regarding the case you spoke of. What was the reason of the delay? Was it a delay on the part of the Commission?

Mr. HIGBIE. No; it was nobody's special delay; it was simply that we did not get there, that was all; I could not complain of anything.

Senator NEWLANDS. Did your lawyers conduct the case with vigor?

Mr. HIGBIE. The case was conducted with vigor. After the case was actually on the calendar of the Interstate Commerce Commission, if my memory serves me rightly, it reached final disposition and the rate was in effect in something like nine months; but the preliminaries to get the machinery in motion consumed time.

Senator NEWLANDS. You mean that it took you four years after you had instituted proceedings?

Mr. HIGBIE. No, sir; it took nine months after the proceedings were absolutely on the calendar.

Senator DOLLIVER. It took over three years to get it on the calendar.

Mr. HIGBIE. Perhaps I was partly to blame, and perhaps it was some one else.

Senator NEWLANDS. I am speaking about the delay from the time the case was commenced until its conclusion; was that nine months or four years?

Mr. HIGBIE. Nine months from the time it was filed and put on the calendar.

Senator NEWLANDS. The rest of the time was consumed in the preparation of the case, outside of the Interstate Commerce Commission?

Mr. HIGBIE. Yes, sir.

Senator NEWLANDS. Assuming that it took nine months to reach a conclusion in that case, do you not think that the Commission will be overloaded if we give them the power proposed to be conferred by the House bill?

Mr. HIGBIE. If you will allow me, instead of replying to that question myself, I will read a short extract from an address delivered by President Hadley, of Yale College.

Senator KEAN. What was the date?

Mr. HIGBIE. It was published within sixty days; I do not know the exact date:

> Nor need we lay any great stress on the argument that such interference would be disastrous to the railroads. Theoretically it might be, if the Commission were composed of madmen and the courts of Socialists.

This is the answer to the question:

> Practically the number of changes in the rate schedule that would be made by any sensible commission would be very small indeed. And even if the Commission should put erroneous schedules into effect they would only last until the courts had upset them. The right of a body of this kind to prescribe rates

is under any circumstances, no matter what Congress may say, subject to the overruling power of the judiciary. It is naturally extremely inconvenient for railroad traffic men to have their freedom interfered with, and therefore they are apt to exaggerate the amount of commercial evil to the schedules which may come from such interference. It is the duty of every man who looks at this matter in its larger aspects to allay the alarm that arises from the cry of confiscation, instead of increasing it. All the power that might be assumed by the Interstate Commerce Commission under any conceivable circumstances would not be likely to do the railroads of the country one-tenth part of the amount of financial harm which resulted from a measure of general legislation like the pooling clause.

The CHAIRMAN. You spoke of this rate from Chattanooga to Buffalo. Do not some of the roads that carry this freight leave Cleveland out of their route; in other words, do not go by Cleveland?

Mr. HIGBIE. I have no doubt, Senator, that there are roads that go between Cincinnati and Buffalo that do not pass through Cleveland.

The CHAIRMAN. Would not those roads make that rate?

Mr. HIGBIE. That is possible; it may be so. But I did not want to take up the time of the committee, so I left out the fact that the same rate applies to Chicago and Toledo, although both cities are nearer to Chattanooga than Buffalo.

The CHAIRMAN. What was the rate from Buffalo to Chattanooga by eastern lines as competitive with the Cincinnati lines?

Mr. HIGBIE. The rates from Cincinnati to Buffalo are the same, 20 cents, no matter which route the lumber goes over.

The CHAIRMAN. Do you agree with President Hadley that the courts are the proper place to correct the wrongs, that the courts should supervise?

Mr. HIGBIE. That is almost a constitutional question which I should hardly feel able to answer, because I am not a lawyer. But, if I understand the situation correctly, the Constitution explicitly provides that the courts can not perform a legislative function, and the naming of an absolute rate is a legislative function.

The CHAIRMAN. But they can correct an abuse.

Mr. HIGBIE. They can correct an abuse upon petition.

The CHAIRMAN. And say what is an unreasonable rate?

Mr. HIGBIE. While the Commission can state what is an unreasonable rate, it can not state what is a reasonable rate.

The CHAIRMAN. You complain of delay, as I believe everybody else does, in the fact that the cases when brought are not expedited. As a practical question, if the power to pass upon these complaints were vested in the courts, or if it exists in the courts, would it not be better to take a case directly to the courts than by way of commissions hearing and determining first, and then to the courts by appeal?

Mr. HIGBIE. That might do, if the constitutional feature can be overcome.

The CHAIRMAN. The Interstate Commerce Commission under the present law can bring suit; would it not be better, and save the delay complained of, to bring suit in court and get a decision from the court without first going to the Interstate Commerce Commission?

Mr. HIGBIE. That might be the result.

The CHAIRMAN. Would it not be better?

Mr. HIGBIE. Anything that would come to a quick and proper solution of a given complaint would be better than the present condition.

The CHAIRMAN. If the Commission finds that it can not settle a

dispute between the shipper and the railroad, can not persuade them to become reconciled, then if the Commission thinks the rate too high it can bring suit in the court itself. Would not that be quicker?

Mr. HIGBIE. Quicker and better.

Senator NEWLANDS. Have you a State commission in West Virginia?

Mr. HIGBIE. I live in New York. We have a State commission in New York, but the commission has not the power to fix rates. It is an advisory board—a board of investigation.

Senator NEWLANDS. Has the action of that commission been, in the main, satisfactory in that State?

Mr. HIGBIE. We have very little dissatisfaction, in the main, with it in the State of New York.

Senator NEWLANDS. Is that commission oftentimes called upon to act?

Mr. HIGBIE. Not upon the question of rates. The commission acts more upon other matters pertaining to railroads.

Senator NEWLANDS. Such as what?

Mr. HIGBIE. For instance, they have the power to order grade crossings changed, to eliminate dangerous crossings by going overhead or underneath, and they also have the power to hear applications for new charters and decide whether a new railroad is a matter of public necessity. Questions of that sort come before that commission.

Senator NEWLANDS. Do they have nothing at all to do with the operation of the railroads themselves or with the regulation of their rates? Have they nothing of a conciliatory nature to do as between communities and the corporations?

Mr. HIGBIE. I do not ever remember a case being brought before our railroad commission which had to do with the direct naming of a rate or with the direct management of a road.

Senator NEWLANDS. As a rule, you find the conduct of the railroads of your State as to State commerce satisfactory, do you?

Mr. HIGBIE. Reasonably so; yes.

Senator FORAKER. Can they not build a railroad in the State of New York without first obtaining the approval of the State commission?

Mr. HIGBIE. My impression is that they can not; that the railroad commission has to certify that there is a public necessity, before a charter will be issued.

Senator NEWLANDS. Is there any control over the issues of bonds and shares of railroad corporations?

Mr. HIGBIE. So far as I know, there is none.

Senator DOLLIVER. You spoke of the various interests represented in this great controversy approaching each other with a view of getting upon common ground for the disposition of this question. To what did you refer?

Mr. HIGBIE. I referred largely to a statement which was made in this brief which was filed with the House committee, I think, by President Spencer and President Willcox. They say:

> The true remedy, therefore, is to ameliorate, rather than exasperate, the relations of the parties; and, discontinuing idle preliminaries, to apply at once to the courts for relief whenever the law is violated.

Senator DOLLIVER. Does that suggest to your mind the proper basis for disposing of the controversy, an effective remedy by applying to the courts for relief when the law is violated?

Mr. HIGBIE. I should say, in answer to that question, that the answer that I made to the chairman was this: That any remedy which will tend to bring the parties together quickly and to make a proper solution which would be acceptable to both parties would be a good thing. But the trouble is that under the present condition no solution has any force. If the courts, in passing upon the reasonableness of a rate, said it was unreasonable, it is supposed that they would know what a reasonable rate is. But if they say, for instance, that a rate of 24 cents is unreasonable, and that a reasonable rate should be 20 cents, that does not amount to anything, because nobody can enforce it. If we can get somewhere an intermediary, so to speak, in which to have the power lodged to say so, that is all we want.

Senator DOLLIVER. Suppose we could devise legal machinery by which the matter of the reasonableness of rates would be brought speedily before a United States court under such provisions of law as to give effect to their decision as to what a reasonable rate in the case at bar actually was. Would that meet the views of such interests as you represent?

Mr. HIGBIE. If they would go one step further, and say that this rate named by the court should be in effect, and that the court should in some way have the power to compel the railroads to put it into effect, I should say yes.

Senator FORAKER. If we could provide by statute those two things and could get it into operation?

Mr. HIGBIE. Yes, sir.

Senator NEWLANDS. Fix a rate for the future?

Mr. HIGBIE. And fix a rate for the future.

Senator NEWLANDS. Would you have that rate inflexibly fixed from that time forward?

Mr. HIGBIE. No, sir; because conditions change.

Senator NEWLANDS. You would give the company full power to raise that rate whenever it saw fit?

Mr. HIGBIE. It might be wiser to say that, before changing the rate, within a given period they should apply for permission to do so.

Senator NEWLANDS. Apply to the court?

Mr. HIGBIE. Apply to somebody who could name the rate.

Senator NEWLANDS. As I understand, it is claimed that these conditions arise suddenly, that the necessity is for immediate action, and that if they go through the process of applying to the courts the immediate conditions may change, and then they must come to a conclusion.

Mr. HIGBIE. It is very hard to meet at the present time every condition that may arise in the future. The only thing we can do is, as far as human ingenuity can devise means to do so, and then trust to the good common sense of all parties interested that in case conditions arise which necessitate a change, all parties will acquiesce.

Senator FORAKER. Is it not to the interest both of the railroads and of the shippers to have some sort of conciliation that will settle the matter?

Mr. HIGBIE. Yes, sir; that is all we ask.

Senator FORAKER. You shippers do not want to be unfriendly with the railroads, and the railroads do not want to be unfriendly with you?

Mr. HIGBIE. No, sir. Some of the kindest and most valued friends I have in a business way are railroad officials.

Senator FORAKER. There is no natural hostility between the two classes?

Mr. HIGBIE. Absolutely none.

Senator FORAKER. They are alike anxious to find some way out of the difficulty.

Mr. HIGBIE. But so far we have failed to find some way out.

Senator NEWLANDS. These extraordinary conditions which it is claimed are required in the changing of a rate that has once been fixed by a court, without going through the process of applying to the court itself, would be likely to arise in case of a reduction of rates, and not in case of an increase?

Mr. HIGBIE. I should say that would be more probable, though, of course, it is problematical.

Senator NEWLANDS. They would arise in very few cases in raising the rate, as compared with immediate reduction.

Mr. HIGBIE. Very few; and it might be well to follow your suggestion and say that a rate should not be changed except by lowering it, without applying to the court. That would cover half.

Senator NEWLANDS. More than half, probably.

The committee ordered the following to be placed in the record at this point:

[From Boston Evening Transcript, Saturday, April 1, 1905.]

PRESIDENT HADLEY, OF YALE, ON RAILROAD REGULATION—THE PUBLIC VERSUS RAILWAYS—BOTH SIDES OF THE PENDING CONTROVERSY—A COURT DEALING ONLY WITH RAILROADS PROPOSED—TO TAKE THE PRESENT COMMISSION'S PLACE—THE COMMISSION TO REMAIN, BUT TO CONSIST WHOLLY OF RAILROAD EXPERTS, WHO SHALL ADVISE THE COURT—INCREASING THE POWERS OF THE PRESENT COMMISSION WOULD ACCOMPLISH LITTLE—WHY AMERICAN RAILROADS NO LONGER CLEARLY LEAD THE WORLD—AN EXPERT'S UNBIASED VIEW.

[By Arthur T. Hadley, LL. D., author of Railroad Transportation, Its History and Laws, etc.]

The railroad question, as it is somewhat vaguely called, consists of two distinct parts: The general question how far the railroads of the United States are open to criticism for the way in which they are doing their work as a whole, and the specific question whether various proposed changes in Federal law will leave us better or worse off than we now are in regard to certain details of management. The confusion between these two branches of the subject causes a great deal of wasted argument. Many a critic of our railroads bases his advocacy of a particular bill on the public dissatisfaction with certain general methods of railroad management, which the proposed legislation would not affect in the least; and many a defender of the existing system believes that he has met the public demand for an improvement of general conditions when he has merely pointed out that some specific measure which has been suggested is not likely to be practicable or efficient in securing that end. The railroad men are so impressed with the mistakes in the demands of the reformers that they do not always appreciate the real forces by which those demands are backed. The reformers, seeing their public importance thus ignored, are impatient with the practical arguments of the railroad men, and believe that the corporations are actuated by a spirit of factious opposition to all reform rather than by any full and clear understanding of the situation in hand.

Let us try to separate the two things which are thus confused. Let us first consider the general grounds of complaint which make people desire some change of system—they hardly know what; and let us then pass to the detailed consideration of the effect of the specific proposals for the amendment of the interstate-commerce act which are now before the public.

COMPLAINTS OF THE PUBLIC.

The general grounds of complaint, just or unjust, are as follows:

There is a widespread distrust of monopoly as repugnant both to the Constitution and to business interests. The railroads to-day are so much more closely and extensively combined than they ever were before that they have in a large measure the practical, if not the legal, character of monopolies. The actual extent of their consolidation is greater than the nominal size of the several corporations would indicate. According to the careful estimate of a recent writer, five groups of railroad, more or less completely controlled by ten men, include three-quarters of the railroad mileage of the country.[a] It is contended that under such conditions the fate of individual shippers and even of whole districts is at the mercy of the railroad agent who may choose to practice extortion, discrimination, or mismanagement, and that the mere possibility of these dangers shows that a power ought to exist which should provide some adequate protection.

The complainants further claim that these dangers are to some extent actual as well as possible. They point out that railroad profits have in the course of a few years increased over 80 per cent,[b] most of this abnormal increase in profits being the "unearned increment" due to the growth of the community, whose appropriation by a monopoly involves misuse of public franchise; that the general level of railroad rates has in the last few years not only ceased to diminish, but has manifested a tendency to increase;[c] that the records of commissions and courts show a defiant persistence in the habit of arbitrary discrimination in rate making, and that side by side with these high profits and arbitrary rates there has been a failure to improve or even to maintain the standard of efficiency of the service. In many parts of the country there has been such a shortage of cars that shippers have suffered severely. This shortage has given the railroad officials the power to decide which shipper might have preference with regard to facilities, thus creating a chance for discrimination and a great temptation to bribery. The development of motive power as well as car capacity has been so far inadequate as to prevent the speed of service from being as much improved as the conditions of the roadbed would allow. This lack of power has caused an amount of habitual delay of trains, by which the traveling public is put to great inconvenience. In certain extreme instances the railroads have so far fallen short of appreciating their duties of public service that they have allowed the supplies of necessaries of life, as in the case of the coal strike, to be interrupted altogether. Of all these matters the railroad reformers claim to furnish adequate proof.

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[a] Morgan-Hill system, 39,690 miles; Pennsylvania system, 21,529; Gould system, 16,820; Rock Island system, 16,685; Standard Oil-Harriman (Vanderbilt) system, 61,844.—(Henry C. Nicholas in Public Opinion, March 4, 1905.) The last figure seems rather too large, and the same thing may, perhaps, be said of the first and second.

(b)	Mileage.	Net earnings.
1895	179,887	$327,505,716
1903	206,876	592,508,512

If 1902 is made the basis of comparison, the discrepancy is still more striking.

(c)	Per passenger mile.	Per ton mile.
	Cents.	*Cents.*
1899	1.925	0.724
1902	1.966	.757
1903	2.006	.763

THE REPLY OF THE RAILROADS.

The companies' answer to these complaints is somewhat as follows:

They admit the fact of monopoly; but they say that this is an inevitable tendency of the age rather than a thing peculiar to railroad business, and that a part of the monopoly which now exists in railroad management is traceable to ill-judged acts of legislation. They deny that the existence of such monopoly has produced or is responsible for abuses, by which the public suffers. They claim that the high profits are an incident of business expansion, likely to be transient, as was the case with a similar period of high profits in 1881; and that taking the average of good and bad years alike it will be found that American railroad profits are exceptionally low. They claim that the increase of rates is only apparent; that while the prices of goods and labor of almost every kind have increased anywhere from 10 to 40 per cent, the price of railroad transportation has increased less than 5 per cent; and that this result means to all intents and purposes a reduction of the charge upon the shipper. They claim that their failure to increase car capacity to meet temporary or transient demands of business is a proof of prudent and wise conservatism rather than disregard of the public interest. They say that the present economy of locomotive power is also an instance of the same wise forethought, because it will be a very short time before electricity is introduced on so large a scale as to throw many steam locomotives out of use. Interruptions of public service like that which occurred in the time of the anthracite coal strike they deplore; but they believe that the blame rests upon others rather than upon themselves. Some abuses, they say, will always exist in any wide-awake railroad system, State or private; but they maintain that the American railroad system, in its development and efficiency, its appliances, and its rates, stand first among all large railroad systems of the world, and that whatever evils may exist therein are incidents of life and progress rather than indications of corruption or evidences of the necessity of stricter regulation.

WHERE THE REPLY RINGS TRUE.

On the majority of these counts the railroad answer seems a sound and strong one. It is, I think, clear that the tendency for creating artificial monopolies in railroad business (as distinct from that inevitable monopoly which is due to the needs of concentrated service) has not been so great as in many other lines of industry during the last decade; and that railroad monopoly should under these circumstances not be treated as a thing repugnant to general business usage, but as a part of the industrial system of the country. In other words, we need have no sympathy with a man who, trying to organize a combination of producers which shall be outside of the control of the law, would subject the combination of railroads which transports his products to market to some special forms of control from which he himself is exempt. I believe also that there has been far less of extortionate profit in connection with railroad monopoly than has been incident to most other kinds of industrial combination. While a figure of $560,000,000 of net earnings for 1902 or of $590,000,000 for 1903 looks large when taken by itself, it must be remembered that these earnings represent an income on an investment of more than $10,000,000,000 of capital.[a] And it must be remembered that as against these two good years, where the roads have earned 5½ per cent, there was a whole series of bad years from 1893 to 1898, when they were earning only 3½ per cent, and that these profits represent only the apparent net earnings—not the sum actually paid out in interest and dividends, which is considerably smaller.

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[a] The nominal figure of capital stock and bonded debt for the 206,000 miles of railroad in the United States is about $13,000,000,000. Very considerable parts of these stocks and bonds are, however, represented by unissued securities held in the treasuries of companies, which would probably reduce the figure of outstanding capitalization to a point between $11,000,000,000 and $12,000,000,000. How much of this last-named amount is "water" is a matter of opinion, on which it will be impossible to arrive at a definite result. But taking the railroads of the United States as we see them, I am confident that it would be quite out of the question to duplicate them for an average of $50,000 a mile; and this figure applied to the whole system would represent a legitimate cost of at least $10,300,000,000.

It seems also clear that the increase in average rates is apparent only and not real. If the price of goods carried and wages of railroad laborers and the cost of materials of railroad construction and operation have increased from 10 to 40 per cent, an increase of apparent charge of 5 per cent on the part of the railroads is virtually a tremendous and gratifying decrease. It shows that the shippers are taxed far less in proportion to what the traffic will bear and that the railroads have organized their service so as to secure greatly increased economy of operation. With regard to the matter of discrimination the case is not equally clear. I am inclined to think—though this is largely in the nature of an opinion, based upon conversations rather than upon statistics—that discrimination in charges is no greater than it always has been and less than it frequently has been; in other words, that the railroads are right in saying that its present importance is much exaggerated; but that discrimination in facilities, resulting from inadequate supply or improper control of cars, constitutes a ground of special complaint and must be severely checked either by the railroad authorities or by somebody else.

A WEAK POINT.

The combination of very high profits with somewhat inadequate service seems to create a just ground for complaint. If the railroads, while earning high profits, were giving business all the facilities it needed, no one but an extreme Socialist would have a right to object—particularly after the number of lean years which marked the conduct of railroad operations at the end of the nineteenth century. Or if the railroads, while failing to provide the needed facilities, could show that they really had no money to pay for them, their position would still be defensible. But when companies which for four years have been making large sums of money provide the public with too few cars and locomotives because future changes may deprive the railroad of the full benefit of these cars and locomotives, there is fair ground for the charge that the claims of the public are being inadequately considered.

It is in connection with these complaints that the public dislike and distrust of monopoly becomes most formidable. Railroad men are right in saying that the inevitable tendency of modern business is toward greater and greater combination, and that what has occurred in the case of railroads is nothing exceptional or in itself repugnant to the interests of business. What they sometimes fail to see is that managers of a monopoly have wider duties and responsibilities than the managers of a business which is conducted under free competition. Where the market has different sources of supply at command a dispute between employers and employees about labor can be treated as a private matter. Where there is such a degree of organization on both sides that the whole supply of an important commodity like coal is in the hands of a few companies closely affiliated with one another, the duty of providing continuous service becomes a public obligation. A failure to make this provision, even under difficult circumstances, will be reckoned as a grave error of judgment and perhaps a breach of trust on the part of the corporations which thus fail to protect the public.

AMERICAN ROADS NOT SO STRONG AS FORMERLY.

The argument that our railroad system is so good that its errors are of minor importance must be accepted with much caution. I am inclined to think that the American railroads are on the whole the best in the world. But this is not nearly so certain as it was twenty years ago. In 1885 the American railroads clearly led the world in the race for supremacy. In 1905 they are in the position of being rapidly overtaken by those of Germany and perhaps of some other countries. Some competent observers go so far as to think that the German railroads meet the legitimate demands of the community better than ours do. Although they have some points of superiority, notably in the arrangement of time-tables for passenger service and in the attempt to prevent discrimination against small shippers in the matter of the delivery of freight, I have not found myself able to agree with this view. But the progress made by Germany in the reign of the present Emperor has been so great that what was once a clear question is now a doubtful one; and it does not become a man whose lead in the race is being cut down to deprecate inquiry into the causes of the change simply because at the moment he happens to be still ahead.

MONOPOLY THAT CRIPPLES.

There has been during recent years a certain change of tone in a good many parts of the American railroad service which is a very serious feature of the whole situation. Twenty years ago it was dominated from top to bottom by a spirit of active ambition. Men were anxious to push ahead, to get away from old methods, to do something that would attract attention and command promotion. Much of this activity was selfish and much of it was reckless, but on the whole it worked in the direction of progressive methods and of good public service. As long as this spirit exists monopoly rarely becomes dangerous. But within recent years the number of men in railroad service, and especially in the operating department, who are actively anxious for promotion and progress has become very decidedly less. With one group of employees this change shows itself in the increased power of unions and union rules. With another group, higher up in the service, it shows itself in a tacit acceptance of the domination of banking interests in railway policy. Each of these things has its good as well as its evil, but taken together they make the increased tendency toward monopoly a much more dangerous thing than it was when the old spirit of restless ambition animated railroad operation. There are still splendidly strong men as presidents and general managers of our great railroad systems. But these men would be the very ones to confirm the statement that ability and principle of their type is becoming scarce, and that half a dozen causes have combined to kill. among the rank and file of railroad operators, that ambition for successful and progressive conduct of the actual work of transportation which was characteristic of past times.

Very few people have formulated this charge against the railroads. Fewer still have dealt with railroad labor and railroad capital from a sufficient number of points to see how deep is the difficulty in which we are becoming involved. But any man who has once compared the professional ambitions of the railroad men to-day with those of twenty or thirty years ago will hesitate to look at the future in a spirit of complacent optimism.

MEASURES OF PUBLIC CONTROL.

SHALL THE INTERSTATE COMMISSION BE ENDOWED WITH GREATER POWER?

Reviewing the arguments on both sides, we shall be led to take a middle position between those who assert that things are so bad that we ought to increase the public control over railroads, without exactly knowing how our measure is going to work, and those who say that things are so good that we can leave matters as they are without any further legislation whatsoever. There is enough evil to make it worth while to study carefully any measure that promises relief or improvement. There is enough good to make it wise to reject unhesitatingly the arguments of those who wish to have Congress enact laws without such scrutiny.

The actual measures of relief proposed are singularly varied in their character. They range from State ownership at one end to the repeal of all existing United States railroad statutes at the other. But those which chiefly occupy Congressional attention at the moment are two in number: An increase in the power of the Interstate Commerce Commission to prescribe railroad rates, and the establishment of a special Federal court to take jurisdiction over railroad cases. The bill which was reported by the majority of the House committee contained both these features. The minority bills contained the former only.

By the original act which created it the Interstate Commerce Commission was given a somewhat shadowy power to decide whether rates were or were not reasonable. This power it has exercised more frequently and more radically than the railroads approved. About one-quarter of the cases in which it has pronounced rates unreasonable have been brought before the courts, and in nearly every instance the opinion of the Commission has been reversed. But the use made of this power, while too great to suit the railroads, has fallen far short of what was wished by many of the shippers, and even by the Commission itself. The members of that body have always desired the right not only to say that a given rate was unreasonable, but to determine what lower rate would be considered prima facie reasonable. Such a determination, if made by the Commission, would have to be reviewed by the courts on appeal; but the position of the complainant in a railroad rate case would be very different from what it now is if, pending the appeal to the courts, the orders of the Commission could

be made provisionally to go into effect. This is the point wherein different bills strive in varying degrees to strengthen the Commission's authority, some contenting themselves with giving it a provisional power to prescribe reasonable rates in specific cases, others going so far as to charge it with the duty of laying down general tariff schedules for the conduct of railroad business as a whole.

THE RIGHT TO MAKE RATES ADMITTED.

That Congress would have the right to pass any of these measures if it chose does not seem open to any practical doubt. In Munn *v.* Illinois it was held that capital invested in business of a public nature was by that very fact subject to a reserved police power of the State which allowed the legislature to impose special regulations and charges upon it to which other property was not liable. In Chicago, Burlington and Quincy *v.* Iowa and the series of the so-called "Granger Cases" it was further decided that railroad business had this public nature, and that the State legislature could employ a commission to make schedules of rates for traffic within the several States. That the courts would hold that Congress had the same rights to impose rates for traffic from one State to another seems fairly clear.

Nor need we lay any great stress on the argument that such interference would be disastrous to the railroads. Theoretically it might be, if the Commission were composed of madmen and the courts of Socialists. Practically the number of changes in the rate schedule that would be made by any sensible commission would be very small indeed. And even if the Commission should put erroneous schedules into effect, they would only last until the courts had upset them. The right of a body of this kind to prescribe rates is under any circumstances, no matter what Congress may say, subject to the overruling power of the judiciary. It is naturally extremely inconvenient for railroad traffic men to have their freedom interfered with, and therefore they are apt to exaggerate the amount of commercial evil to the schedules which may come from such interference. It is the duty of every man who looks at this matter in its larger aspects to allay the alarm that arises from the cry of confiscation instead of increasing it. All the power that might be assumed by the Interstate Commerce Commission under any conceivable circumstances would not be likely to do the railroads of the country one-tenth part of the amount of financial harm which resulted from a measure of general legislation like the pooling clause of the act of 1887.

BUT LITTLE GOOD WOULD RESULT.

But while Congress could undoubtedly increase the powers of the Interstate Commerce Commission if it wanted to, and that without any serious financial damage to the railroads, it is improbable that such action would result in much good to the public.

The advocates of increased power for the Commission say that in 1887 Congress passed a law to give the Interstate Commerce Commission power to prescribe such rates as it thought reasonable; that the power was assumed and exercised by the Commission on a large scale, until it was taken away from it by a decision of the Supreme Court in 1897; that while this power was exercised railroad tariffs and rates, if not in an absolutely satisfactory condition, were at any rate in a condition far more satisfactory than they were before or since, and that therefore a renewal and increase of this power will presumably result in public advantage. These statements have been so confidently made that a great many people accept them as true. But an examination of contemporary evidence shows that they are false. In the debates which preceded the passage of the interstate-commerce act there is positive evidence that the Commission was not expected to have such power. The men who wanted the railroad control objected to the existence of the Commission, because they said it would operate to prevent the law from being carried out as effectively as it would be if appeal were made directly to the courts. The assumption of the power by the Commission in the celebrated Louisville and Nashville case was an unexpected thing, based on a comparatively unnoticed phrase in the act. The principles which determine what constitutes a reasonable rate were in that particular case formulated so conservatively that the opinion won much approval, and the Commission, during the first years of its existence, gradually extended the application of this power beyond what its members had originally contemplated. But after two years of this policy on the part of the Commission

we find Judge Cooley himself saying, in a published and accredited interview, that railroad abuses at the end of that time were worse than they ever had been in all his previous experience. The members of the Commission desired greater legal authority and claimed that they ought to have it, but we look in vain for any trace that they believed themselves to possess that authority which people now say was taken away from them, or for any indication that their work in the control of rates in the years from 1891 to 1897 produced the salutary results which are now attributed to it.

WHY THE OWNER SHOULD INITIATE RATES.

Nor could it, in the nature of things, do so. The power to make rates for the traffic of the United States is too vast a thing to be handled by the machinery of the Interstate Commerce Commission, even if the power and expense of that machinery were considerably increased. The initiation of a successful rate policy must come from the owner, not from somebody else who tries to control the action of the owner. Governments have been sometimes successful in their rate making when they operated their roads, but I do not know a single instance of really successful rate making by a Government which attempted to control roads that somebody else operated. All business, even large public business, has an experimental character. A corporation spending hundreds of thousands of dollars to study traffic conditions all over its territory can make a large number of experiments for itself. Some fail; others succeed. It has it in its power to stop the failures and pursue the successes. If some one else, spending only a small fraction of that amount of money in the investigation of that particular territory, is making a schedule for it, there is less freedom to make experiments. If the rates turn out to be too low it amounts to confiscation. The only alternative is to leave them too high—so high as to be ineffective. This is what, with the rarest exceptions, has happened in France and in England—nay, even in Germany at the time when a large number of the German roads were owned by private companies. If we put our rate-making power into the hands of the Interstate Commerce Commission we might possibly have a more even schedule than we have at present. But if the schedules were adhered to, it would unquestionably mean much higher rates and smaller volume of traffic than we now enjoy; and if they were not adhered to the evils of the discriminations, which all men who have studied the subject regard as the most serious evil connected with railroad rates, would tend not to diminish but to increase.

A Railroad Court.

THE PRINCIPLE CONTAINED IN THE TOWNSEND BILL IS FAVORED, BUT NOT THE SPECIFIC APPLICATION.

The appointment of a special railroad court seems a more promising means of dealing with our difficulties than an increase of the power of the Interstate Commerce Commission. There is enough that is distinctive in railroad cases and the precedents connected with them to warrant the creation of a body of judges whose learning is to be specially devoted to this branch of the law. Whether the particular form of court favored by the majority of the Interstate Commerce Committee of the House of Representatives would meet the end in view is another question. The Townsend bill, reported by the majority of the members of that body, provided for the appointment of five additional circuit judges, who should take jurisdiction in cases already acted on by the Interstate Commerce Commission, and apparently in those only; and it contained supplementary provisons that the findings of the Commission should be prima facie evidence in matters of fact, and that additional evidence which might have been brought before the Commission (and was not) should be excluded from the proceedings before the court. I believe that these provisions with regard to evidence, especially the latter one, would be very difficult to enforce. I believe also that the attempt to confine the activity of this court to cases already decided by the Interstate Commerce Commission would prove futile and vexatious. What is the use, say the opponents of such a court, of arranging to have every question decided twice—once by the Interstate Commerce Commission and once by a court to review the acts of that Commission? Why not have the thing done all at once, instead of introducing an additional piece of machinery which is expensive in its character and uncertain in its workings?

Of course the advocates of the bill say that they are not introducing an addi-

tional piece of machinery; that inasmuch as cases appealed from the Commission must go to the courts in any event, they are simplifying matters instead of complicating them by providing for a special court to which they should go. This is better as an argument against the present system than as an argument in favor of the proposed one. The objection to having two different bodies to do the same work twice over is real and sound. The plan of having a special railroad court would be much stronger if it were accompanied by a proposal to relieve the Interstate Commerce Commission of the judicial or semijudicial authority which it now undertakes to exercise.

A SEMIJUDICIAL COMMISSION NOT A SUCCESS.

A semijudicial commission to regulate rates has not worked well in England, where the system was tried pretty thoroughly; nor does the past history of the Interstate Commerce Commission indicate that it is likely to work well in this country. Given a body of men who are neither judges nor technical experts, but who assume to perform the functions which belong both to judges and to technical experts, and you are practically certain to find a great many of their decisions reversed. They may of course accomplish something. How much they accomplish will depend largely upon the men themselves. In the opening years of the work of the Interstate Commerce Commission it had as chairman a very able judge. The decisions which he wrote were influential. After his illness and subsequent withdrawal from the Commission the work of writing decisions fell into the hands of men who were not judges—keen lawyers, but trained as advocates instead of arbiters. These men failed to secure corresponding influence for their opinions, not because the Commission lacked the power of a court, but because its members lacked the habit of mind which has distinguished American and English judges—skill of deciding individual cases in such fashion as to create positive rules of law, and self-restraint in not deciding matters which would confuse the law instead of settling it.

The question may be asked whether any court, however well trained its members, could make the rules which we need for the regulation of interstate traffic in the United States. It would doubtless have authority to declare certain rates unreasonable; but could it indicate clearly how much rates would have to be reduced in order to be reasonable? Could it make negative rules which should result in positive reforms? We might admit that these reforms would not come quite so fast as radical reformers desire; but I believe they would come more surely and permanently in this way than in any other. A negative rule which will be upheld and obeyed is a good deal better basis of practical reform than a positive rule whose authority is uncertain. The history of equity jurisdiction in its various branches shows that when the higher courts of any country have really made up their mind to get certain things done they get them done; and that the attempt to secure the same result faster by means of short cuts creates so much confusion and uncertainty as to delay the very consummation which it has been intended to hasten. The Interstate Commerce Commission represents just such a short cut; and I confess that I see no indication that it has proved or is going to prove more successful than most other experiments of the same sort. Its members wish to have part of the duties of a traffic manager and part of the authority of a Federal judge, without necessarily having the previous experience which goes with the successful exercise of either function. From such antecedent conditions I do not see how we can expect successful consequences.

PRESIDENT HADLEY'S PLAN.

HE ADVOCATES A NEW RAILROAD COURT, TO HAVE JUDICIAL AUTHORITY, WHILE THE COMMISSION WOULD CONSIST OF RAILROAD EXPERTS.

A certain amount of advance might be made by turning the Interstate Commerce Commission into a court, providing that each member, as his term expired, should be replaced by a man of judicial experience. But I believe that it would be a better plan to establish a new court somewhat on the lines proposed by the Townsend bill, coordinate in authority with the Federal circuit courts of appeal, to which, after brief preliminary hearing in the lower court, all railroad cases, from whatever district originating, could be referred. Such a procedure is, of course, somewhat of an innovation in our American judicial system. The Court of Claims, which furnishes the nearest apparent parallel, really

stands on quite a different footing. But looking at the matter from a layman's point of view, it does not seem as though any of the obstacles were insuperable; and if such a court could once be established the homogeneity and positive force in our Federal railroad law would be greatly increased. With such a court to exercise the judicial functions now assumed by the Interstate Commerce Commission, the character of that Commission would naturally be changed. It should consist not of lawyers, but of railroad experts, and should be charged with the duty of furnishing technical assistance to the new court in determining obscure and complex matters of fact. When an individual sues a railroad on a difficult question of rate adjustment, the railroad always has an advantage in being able to know more facts than the complainant can ascertain.

The assumption of equality of information which holds good in ordinary matters of litigation hardly seems to apply in this case. The need of some expert authority which shall represent the court, as distinct from either of the contending parties, becomes very great. Such a technical commission should, I think, include three men who were trained in the traffic department of the railroad service, one in the operating department, and one in the financial department. It would not be necessary or even desirable to include a representative of the shippers or a representative of the legal department of railroads. The presence of such men on the commission would simply obscure the purpose for which it was intended—the purpose of ascertaining facts needed by the court as a basis for its decision. The court itself would be competent to furnish the justice and the law.

Whether in the existing temper of the public mind it would be possible to command assent to a scheme of regulation which is so modest in its claims, and which in certain respects looks like a step backward, I am not prepared to say. But I feel confident that if such a system were once adopted it would prove more fruitful than many of the larger schemes of reform which are uncertain and doubtful in their application. In 1870 the popular voice regarded the Massachusetts railroad commission as ridiculous, and the commissions of the States of the Middle West as efficient bodies whose work promised a solution of the evils under which we suffered. Yet before the year 1880 the work of these "efficient" commissions had been swept away completely, and the real reforms which were being made went back to the conservative men in Massachusetts for their starting point. The problems to-day are different from what they were thirty-five years ago, and the measures adopted will also need to be different. But the good old rule of "More haste, less speed," which has stood for centuries, has not been abolished even by the exceptional experience of the last thirty-five years.

STATEMENT OF MR. EDWARD P. BACON—Continued.

The CHAIRMAN. Mr. Bacon, you may proceed with your statement.

Mr. BACON. Mr. Chairman and gentlemen, before proceeding with my own statement I wish to present a statement on behalf of the Southwestern Lumbermen's Association, at its request, which has been forwarded to me for the purpose. That is an association covering the States of Missouri and Kansas and the Indian Territory and the Territory of Oklahoma.

The CHAIRMAN. You may file that, Mr. Bacon.

Mr. BACON. It contains information which I think should be presented, the same as though a representative of the association were here in person.

The CHAIRMAN. Do you want to read it all?

Mr. BACON. It will not take more than five minutes to read it, probably not that long. It is very concise and condensed, and has been prepared with great care in order to save time. It was the intention of that association to send some one here to represent it, but instead of doing so they finally decided to put the statement in condensed form and send it to me, requesting me to present it to the committee. The

communication was consequently addressed to me, and reads as follows:

Mr. E. P. BACON, *Chairman, Washington, D. C.*

DEAR SIR: While for the past four or five years the discussion in hearings before the Congressional committees have seemed to have most thoroughly exhausted the subject of discrimination in freight rates on yellow-pine lumber from Texas, Lousiana, and Arkansas into Oklahoma and central and western Kansas, yet since an investigation is being conducted in Washington in presence of the Senate committee at the present time, it has been thought best by the executive committee of the directory of the Southwestern Lumbermen's Association that our railroad committee, consisting of E. R. Burkholder, of McPherson, Kans., and myself prepare a letter of complaint or brief to forward to you at Washington in form for you to present to the Senate committee, now in session, and ask their most careful consideration of such facts and conditions.

To begin with, we will ask that you call the attention of the committee to the conference which Mr. Burkholder, Mr. Adams, and myself had in February, 1902, with the Senate committee in Washington, and the written statement of the freight-rate discriminations as given by Mr. Burkholder, all of which is printed in the report of the hearings at that time and distributed throughout the country.

The chairman will remember, probably, that when the committee was in session at that time three gentlemen appeared to represent this association and stated the difficulties under which they were suffering in consequence of the discriminations in rates.

It must now be quite familiar to the members of the Senate committee that for twenty-five years or more the railroads hauling yellow-pine lumber from Texas, Louisiana, and Arkansas have charged a discriminating and absolutely high rate of freight on lumber to Oklahoma and central and western Kansas. For years the rate to such territory was 28½ cents per 100 pounds, and the rate to Kansas City and Omaha was 22 cents per 100 pounds. Later the rate was changed a very little. To-day the rate to Wichita, Emporia, and other points in central Kansas is 27½ cents, while the rate to Kansas City and Omaha is 23 cents per 100 pounds. The roads over which most of the yellow pine is hauled to Kansas and Chicago were built at a cost of grading very high, since such roads run through rough and hilly country and land valued as high as is the usual cost of right of way. The distances to the 27½-cent points are no greater than to Kansas City and much less than to Omaha, Chicago, and Indiana points. To illustrate more clearly this discrimination, let me state that a train of cars of lumber starts from Camden or other common point in Texas via Atchison, Topeka and Santa Fe Railway, and one car is dropped off in Oklahoma at 27½ cents per 100 pounds; one each also at Wichita and Emporia, Kans., at 27½ cents per 100 pounds; one at Kansas City at 23 cents, and two cars also set off this same train at Kansas City, destined for Omaha and Lincoln, Nebr., at 23 and 24 cents per 100 pounds, respectively. The balance of this train, now at Kansas City, runs on to Chicago, and 24 cents per 100 pounds is the charge then for most of the train which is left there. The remaining cars are turned to some Indiana point at 27½ cents, and there we have the inconsistency, unfairness, and inequitable rates shown as glaring violations of the fourth clause of the interstate-commerce law intended to correct such rates. Why should builders of homes in Wichita and Emporia, Kans., pay higher freight than builders in Kansas City, Omaha, and Chicago when using yellow pine from Texas?

There are three lumber districts as originating points on which these discriminations rule—Camden, Ark., Trinity, Tex., and Plaquemine, La. From Camden, Ark., to Wichita, Kans., is 612 miles by the short line, to Kansas City 642 miles, to Topeka 650 miles, to Omaha 846 miles, and to Lincoln, Nebr., 850 miles. The greater portion of the lumber coming to Wichita, Emporia, Kans., and other central Kansas points is routed over the Atchison, Topeka and Santa Fe Railroad and Rock Island Railroad via Fort Worth, Tex. From Fort Worth to Wichita is 369 miles; to Topeka, 534 miles; Kansas City, 591 miles; Lincoln, Nebr., 789 miles; Omaha, 845 miles. Rates to these points have been named above. In the Wichita case, tried before the Interstate Commerce Commission, the Rock Island Railroad Company admitted that these rates violated the fourth section of the act to regulate commerce. Competition of white-pine lumber from the North at Kansas City does not practically exist, as the sup-

ply of white pine has been practically exhausted in Wisconsin and Michigan. No attempt has been made in the Wichita case to prove that the rate to Kansas City has not been remunerative. The Commission decided that this rate to Kansas City was remunerative and, by implication, that the rate to Wichita was too high. Testimony showed that cars going south with grain returned loaded with lumber.

The complaint made herein is the complaint that has been repeatedly made for the last twenty years. No redress to amount to anything has been rendered. Mr. Lincoln, of the Missouri Pacific, admitted that although the rate of 27 cents was made as an emergency rate to bring in yellow-pine lumber into the territory, yet in 1899 the rate was advanced to 30 cents to Wichita and 29 cents to Emporia, and, too, after the protests by the lumber dealers, the rates for this whole territory were established at 28½ cents. As stated above, the rate to both Wichita and Emporia is 27½ cents. The discrimination between Kansas City and these central Kansas points is 5½ cents per 100 pounds, or $2 per 1,000 feet of lumber, or about $34 to $38 per carload. Why should planing mills and other factories in Emporia and Wichita be made to pay this difference over Kansas City?

There is no need of going into the explanation of the necessity of an amendment to the interstate-commerce law. The Supreme Court decision of 1897 shows such to be necessary. In the minds of the consumers of and dealers in lumber in Oklahoma, central and western Kansas, the makers and improvers of law should delay no longer the passing of an amendment to the act to regulate commerce which shall be as strong in the direction of giving power to the Commission to promptly correct these discriminations as is the Esch-Townsend bill, passed almost unanimously by the House last winter.

Kindly present this letter to or read it to the Senate committee in session. We plead for their prompt and fair consideration of exhaustive arguments already on file.

Very truly,

J. E. EVANS,

[Signing for both E. R. Burkholder and himself as committee from the Southwestern Lumber Dealers' Association on railroad freight rates.]

Senator FORAKER. The gist of that paper is that less is charged for a long haul than is charged for a short haul.

Mr. BACON. That is the gist of it.

Senator FORAKER. And the points at which the lower charge is made are Kansas City and Chicago chiefly, are they not?

Mr. BACON. Kansas City, Chicago, and Omaha.

Senator FORAKER. All competing points?

Mr. BACON. Yes, sir.

Senator FORAKER. I am only asking in order to get your idea as to why the roads should give cheaper rates; it is because they are competing points.

Mr. BACON. That is probably the cause of the difference in rates. I am not thoroughly familiar with the routes and do not know.

Senator FORAKER. I am only asking for information. We had a witness a day or two ago, Mr. Gardner, of Mississippi. His testimony was that the roads east of the Mississippi were discriminating against the men engaged in the lumber business west of the Mississippi. These are the rates west of the Mississippi River that this paper refers to.

Mr. BACON. Yes, sir; but reaching a different territory.

Senator FORAKER. I know it is a different territory altogether; but he claimed that the rates complained of in this paper were much more favorable to the lumber dealers west of the Mississippi than the rates which they have made east of the Mississippi River are to them.

Mr. BACON. I think that was the point Mr. Gardner made. I will say, for the information of the committee, that this association is a

very important and extensive one, in numbers as well as in the territory which it covers. I am informed that it numbers about 1,500 members and covers the lumber interests of the two States and two Territories I have mentioned.

Senator FORAKER. I do not understand that they complain that the rates charged are too high. The charge they make is that there is discrimination in giving a lower rate for the longer haul than they enjoy for the shorter haul.

Mr. BACON. In one paragraph they allege that the rate is unreasonable in itself to those interior points in the State of Kansas.

Senator FORAKER. I did not observe that remark. I did observe that their statement was that they formerly paid a much higher rate than they do now.

Mr. BACON. A 1 cent higher rate; yes.

Senator FORAKER. It was a higher rate, at any rate.

Mr. BACON. If the Senator desires, I will reread that portion.

Senator FORAKER. I do not desire it. I just wanted to get the gist of the paper.

The CHAIRMAN. Proceed with your statement, Mr. Bacon.

Mr. BACON. In the first place, gentlemen, I want to say a few words further in relation to the question of export and import rates as compared with domestic rates, a subject to which I referred in my remarks yesterday. I stated that one of the causes of discrimination, or rather one of the forms of discrimination which are practiced by the railways and which are open to serious objection, and perhaps a question as to the correctness of the policy pursued in relation to them, is the difference between domestic and export rates. To give an illustration of that, I wish to refer to a rate which has been recently put into effect on grain from the Missouri River to the Atlantic coast in competition with the rate from the same territory to the Gulf ports. There has been, as doubtless you are aware, a sharp competition during the past year, particularly in the traffic originating west of the Missouri River and terminating either at the Atlantic coast or at the Gulf ports; and in consequence of that competition extremely low rates have been made from those points or from that territory to the Atlantic coast which interfere to a very serious extent in the matter of wheat as compared with flour, to an extent that is very detrimental to the milling interest. On my way here I happened to be shown a bill of lading at Chicago which gave the rates on a certain shipment which was made from Omaha to New York, and the bill of lading, in stating that rate, had indorsed upon it a statement that if used for domestic consumption at New York it should be subject to a different rate; and the two rates were stated. In the one case it was 13½ cents——

The CHAIRMAN. Was that on wheat or corn?

Mr. BACON. In this particular case it was on oats; but the same rate applies to all kinds of grain.

The CHAIRMAN. Does that same rate apply to wheat and corn?

Mr. BACON. The same rate applies to wheat and corn; yes, sir. In this case the rate is made 13 cents if exported, and 25½ cents if used for domestic purposes at the seaboard.

I will say, in the first place, that a large quantity of the wheat raised west of the Missouri River, particularly in Kansas, is used in milling at Minneapolis and Milwaukee and at Chicago; and that

the rate from those points, when milled in transit, is the same on wheat as on flour for domestic use. The wheat that can be transported, or that is now transported from the Missouri River to the Atlantic seaboard at 13 cents a hundred, comes into competition with the flour that is subject to a rate of 25½ cents a hundred from the same territory. That rate on wheat of 25½ cents may be applied as a transit rate on flour to be milled either at Milwaukee or at Chicago, and there is a somewhat lower rate made on that if for export, but not anywhere nearly in proportion to the rate that is made on the grain itself, so that the millers at Chicago and Milwaukee and even at Minneapolis also are cut off from the milling of that wheat—that is, if they purchase that wheat at Missouri River points and mill it in transit and ship it through to the seaboard on the throught rate from the Missouri River to the seaboard, the cost of the transportation of the flour is very greatly in excess of the cost of the transportation of the wheat, and consequently the milling of that wheat is prevented in this country, and is transferred to the other side of the ocean.

The CHAIRMAN. What is the difference in those rates?

Mr. BACON. The difference in those two rates is the difference between 13 cents and 25½ cents a hundred, or 12½ cents—nearly double the rate; but I am under the impression that there is a less rate on the exported flour——

The CHAIRMAN. Between flour and exported wheat, what is the difference in rate?

Mr. BACON. There is a less rate charged on exported flour than on domestic flour, but not so large as prevails on the exported wheat and domestic wheat. Mr. Bird is in the room and he is familiar with that territory and can probably state what the export rate is.

The CHAIRMAN. Right there, Mr. Bacon, does the Canadian Pacific come into this competition?

Mr. BACON. Not from the Missouri River; no, sir.

The CHAIRMAN. But it does after the freight reaches Chicago, Minneapolis, St. Paul, and Milwaukee, does it not?

Mr. BACON. The Canadian Pacific does not take much business from Chicago and Milwaukee. It does from Minneapolis.

The CHAIRMAN. Yes.

Senator FORAKER. What is the point you are trying to make about that, Mr. Bacon?

Mr. BACON. The point is that this very large reduction in the export rate on wheat prevents the manufacture of flour in this country, which is charged at a much higher rate for the same transportation.

Senator FORAKER. It is a discrimination, then?

Mr. BACON. It is a discrimination between the two articles—the raw material and the manufactured product.

Senator FORAKER. It is a discrimination in favor of wheat as against flour?

Mr. BACON. That is it.

Senator DOLLIVER. Is it not a discrimination also which gives to the farmer a choice of markets, rather than confining him to the market made by the Millers' Association in our milling country up there? In other words, if that discrimination disappears, how would it affect the men who are offering wheat for sale—the farmers?

Mr. BACON. The low export rate would have the effect to advance

the price of wheat at the point of shipment. There is no doubt about that.

Senator DOLLIVER. And if that advantage disappeared, it would practically leave the farmer shut in to the milling market of the Northwest, would it not?

Mr. BACON. Yes; but on the other hand the manufacturing of the wheat in this country is transferred to countries abroad, countries on the other side of the ocean.

Senator CULLOM. What is the difference in the rate on a manufactured carload of flour, and the amount of wheat necessary to make it?

Mr. BACON. I do not believe I understand the question, Senator.

Senator CULLOM. There ought to be a difference, I suppose, between the shipment of a given number of pounds of flour and a given number of pounds of wheat—the same number of pounds of wheat—ought there not? The railroads certainly make a difference?

Mr. BACON. The custom has been in the transportation of wheat and flour to make the same rate per hundred pounds for both.

Senator CULLOM. That is the rule, is it?

Mr. BACON. That has been the custom for a great many years.

Senator CULLOM. Then, what is the objection that you are making?

Mr. BACON. My objection is that the very low rate of freight made on wheat prevents the milling of wheat in this country and deprives the milling industry of the benefit of that milling.

Senator CULLOM. It would not prevent it if there was a low rate on flour as well, would it?

Mr. BACON. If the flour were carried at the same rate as the wheat, that would equalize it again.

Senator CULLOM. That is exactly what I am trying to find out—what the difference is between the freight in the usual trade.

Mr. BACON. In the usual trade there is no difference. They are carried at the same rate. But in the present instance this extremely low rate of freight made on wheat is not applied to the flour.

Senator CULLOM. I have had a great many appeals by the milling men setting forth the fact that there is a discrimination between the cost of transportation of wheat and flour between this and foreign countries and between our western country and New York, but I never did know exactly what the rule ought to be or what the charge ought to be, whether the railroads ought to carry these articles at the same rate per pound or not.

Mr. BACON. The Commission went into an investigation of that question some five years ago—a very thorough and extensive investigation of it—and arrived at the conclusion that flour ought not to be charged more than 2 cents per hundred pounds more from Chicago to the seaboard than wheat, which at that time was about 10 per cent of the rate on wheat. When the rate is reduced to this extremely low point for the exportation of wheat and a corresponding reduction is not made on the exportation of flour, the miller is cut off from the export trade in flour.

Senator CULLOM. If the railroad does not charge more than 2 cents a pound more for the transportation of flour than for the transportation of wheat, would that interfere with the shipment of flour?

Mr. BACON. That difference that was established by the Commission was deemed satisfactory by the milling trade.

Senator CULLOM. That was deemed satisfactory by the milling trade, was it?

Mr. BACON. Yes, sir.

Senator DOLLIVER. What became of that decision?

Mr. BACON. It was followed to a certain extent for a period of time—a year or thereabouts—with the exception of occasional variations, and since that time it has been to a large extent ignored. It is followed to some extent. It is followed except in the cases of these extremely low rates that have to be made, or that are made, for the exportation of wheat—that is, the railway companies comply with it to such extent as they find it or deem it to be to their interest and advantage to comply with it.

The CHAIRMAN. What did the railroads do in that case? Did they acquiesce in it, or was the case taken up?

Mr. BACON. I was just saying that it was followed to a considerable extent for a year or two, and it is still to some extent adhered to, but when these competitive rates for export traffic come into operation the difference between the rate on wheat and flour that was established by the Commission is entirely ignored.

The CHAIRMAN. It has disappeared?

Mr. BACON. It has disappeared.

The CHAIRMAN. There has been no case taken to the courts on that discrimination?

Mr. BACON. There has not.

Senator CULLOM. They charge more for flour than 2 cents additional, do they?

Mr. BACON. With reference to this export rate, the difference is very much greater. What it is I have not learned.

Senator FORAKER. I thought you said it was 25 cents a hundred on flour and 13½ cents on wheat.

Mr. BACON. That is from Missouri River points.

Senator FORAKER. To the seaboard. Who is complaining of that, Mr. Bacon—the flour men, or the millers?

Mr. BACON. It is the millers that suffer from this discrimination.

Senator FORAKER. How does the export of flour, since the difference in the charge on flour and wheat was established, seem to have been affected by it?

Mr. BACON. Well, during the present crop of wheat prices have been so high in this country as compared with prices abroad that the export of wheat has been exceedingly small. It has only been some of the long-established trade that has been continued.

Senator FORAKER. There has been very little wheat to export?

Mr. BACON. There has been very little wheat to export. Prices have been kept artificially high by the manipulation which has been going on almost during the entire progress of this year.

Senator FORAKER. Has there not been a short crop of wheat last year and the year before?

Mr. BACON. It was a short crop, and, in addition to that, there has been extensive manipulation in it during almost the entire crop year.

Senator FORAKER. Let us find out about that. The crop was much shorter in 1903, was it not, than it usually is?

Mr. BACON. Yes, sir; some 200,000,000 bushels short.

Senator FORAKER. And of course that affected the amount exported?

Mr. BACON. To be sure; and it affected the price, and the high price prevented the exportation of the wheat, or flour either.

Senator FORAKER. The producers of wheat are not making any complaint about these rates, are they?

Mr. BACON. Oh, no.

Senator FORAKER. They are pleased with it?

Mr. BACON. As I say, this is to the benefit of the producer.

Senator FORAKER. It is to the benefit of the producer?

Mr. BACON. And to the detriment of the manufacturer.

Senator FORAKER. It is to the benefit of the farmer who raises the wheat?

Mr. BACON. Yes, Senator; but in the making of laws it is essential to consider all interests as a whole, and not to consider that one interest is benefited and another is injured, but to place all as nearly upon an equality as practicable.

Senator FORAKER. Yes; they ought all to be upon an equality. I suppose there is some reason for making this decided difference in the rates on flour and wheat, respectively?

Mr. BACON. The reason is, as I stated, the competition between the Atlantic ports and the Gulf ports.

Senator CLAPP. That would not account for a discrimination between flour and wheat for export trade, would it?

Mr. BACON. Certainly not, if the rule was pursued which the Commission established of maintaining only 2 cents a hundred pounds difference, or, as was the fact at the time this decision was made, a 10 per cent difference.

Senator CULLOM. One was for export and the other was for home consumption?

Mr. BACON. Yes; and the question comes home to the consumer at the Atlantic seaboard, who is required to pay double the transportation for what he consumes that the consumer in Great Britain is required to pay for the very same article transported the same distance in this country.

Senator FORAKER. What purpose did the railroads have in making that wide difference?

Mr. BACON. The purpose of the railroads was to increase their traffic; in other words, to meet the competition to the Gulf ports from this territory west of the Missouri River.

Senator FORAKER. To do what?

Mr. BACON. To meet the competition from Missouri River points to the Gulf.

Senator FORAKER. That is, the rates down to the Gulf ports are low on wheat, and they have to make them low to the Atlantic seaboard to compete?

Mr. BACON. That is it. The difference in distance is very great.

Senator FORAKER. But they do not send any flour out through the Gulf ports, do they, to amount to anything?

Mr. BACON. Very little is sent out through the Gulf ports, sir.

Senator FORAKER. What is the objection to sending flour through the Gulf ports for export?

Mr. BACON. It is liable during a large portion of the year to heating and to become sour.

Senator FORAKER. So that there is really no competition, so far as

the Gulf ports are concerned, for the shipment of flour with the Atlantic ports to amount to anything?

Mr. BACON. Yes, sir; that is a fact.

Senator FORAKER. The one is without competition, and the other has sharp competition?

Mr. BACON. That is it. But what I wish to bring out is not so much the fact of this difference, the large difference which exists and the interference with the milling industry, but to show the necessity for some tribunal which shall determine whether these differences are just and right or not; whether there is unreasonable discrimination and undue discrimination, and whether there is an undue injury to a certain class of people or not.

The CHAIRMAN. Does not the power to meet that condition exist under the law of 1903—the Elkins law? Why can you not proceed against that discrimination—go right into court about it now? What could this committee do, or what could Congress do, to facilitate that?

Mr. BACON. Because after you have gone through it it is of no effect, as has been the case——

The CHAIRMAN. It is of no effect if a court finds that there is a discrimination or an unreasonable rate, and the court enjoins it? Would not that have all the effect you would want?

Mr. BACON. As I remarked yesterday, if the court passes upon the question of discriminations in published tariff rates, it is put in the position of fixing a rate, which the Supreme Court has declared——

The CHAIRMAN. Not at all.

Mr. BACON. Most assuredly. If the justice or equity of the rate is assailed and the court determines that there is injustice in those rates, it practically changes the rate, or requires a change in that rate, which the Supreme Court has declared no court in the country is competent to do.

The CHAIRMAN. But full power is given to enjoin the rate at once and to stop it, or the discrimination, or the abuse, and make it cease to be effective. The power is now existing, by injunction, to enjoin it and make it of no effect.

Mr. BACON. It may enjoin that specific rate.

The CHAIRMAN. Certainly.

Mr. BACON. But even in doing that the effect of it is to change that rate, which the Supreme Court has declared can not be done by a court.

Senator CLAPP. I do not want to get into a controversy with you, but if you would read the last utterance of the Supreme Court on that subject you would certainly modify your views as you expressed them yesterday, and as you are expressing them now.

Mr. BACON. To what case do you refer?

Senator CLAPP. The case of the Missouri Pacific Railway Company *v.* The United States (189 U. S., 274), where the action was brought to prevent discrimination in rates between different localities. The action was brought before the Elkins bill was passed. Pending its decision the Elkins bill was passed, and the court held that that gave the court jurisdiction to entertain a bill founded upon the complaint that the rates were discriminatory; and it absolutely disposes of the case that you read yesterday.

Mr. BACON. Did the court go so far as to state that the rate was unreasonable, or was unjustly discriminatory in that case?

Senator CLAPP. Why, certainly. Of course the court could not say in that case what should be a substituted rate; but there is not any question but what under the law as it stands now the condemnation of a rate by the Commission upon the ground that it is a discriminatory rate can be sustained by the court. I simply called your attention to it because yesterday I felt that you were clearly wrong.

Mr. BACON. I have not happened to observe that decision.

The CHAIRMAN. It has been printed as a part of our proceedings.

Senator CLAPP. The lawyers on the committee will bear me out that that is an absolutely fair statement of that case.

Mr. BACON. That is a case in the Supreme Court?

The CHAIRMAN. Yes; and it has been put in the hearings, on Senator Foraker's motion.

Mr. BACON. I shall be interested in reading that case.

The CHAIRMAN. Can you give us the date of that bill of lading to which you referred a while ago, that you read in Chicago the other day? Have you the bill of lading there?

Mr. BACON. I have not got it here. I have merely a memorandum taken from it, and my memorandum does not show the date. However, I recollect the date. I was at Chicago on the 1st day of May, and this bill of lading was a fresh bill of lading that had just been received by the party who showed it to me. It was dated, if my recollection serves me right, April 29.

The CHAIRMAN. That is all I want. Now, proceed.

Mr. BACON. It was within a very few days, at any rate.

Senator FORAKER. I want to ask another question. Suppose we find a remedy for this discrimination that you are talking about, and we apply it: What do you think it should be; that the rate on wheat should be advanced, or that the rate on flour should be reduced?

Mr. BACON. I would not like to pass an opinion on that. I think that is one of the things for the Interstate Commerce Commission to determine after obtaining all the evidence in relation to it on both sides.

Senator FORAKER. A court could determine that just as well as a commission, could it not? I am not asking this in any controversial way, but just to bring out your view.

Mr. BACON. Undoubtedly.

Senator FORAKER. They could do it just as well as the Commission.

Mr. BACON. The judge of the court would be able to determine that question as readily as the Commission; but I would like to say one word further in that direction. The Commission, from long practice in these cases, has become familiar with a great many of the details of transportation and rates, which the court in general has had no opportunity to acquaint itself with, and it proceeds on that knowledge to a very large extent.

Senator FORAKER. Let me ask you this, as you have a practical knowledge of rate making, I am told: Is that rate of 25 cents a hundred from Missouri to the Atlantic seaboard an unreasonable rate?

Mr. BACON. I do not think it is; no, sir. That is the established rate. But the export rate of 13 cents, only 50 per cent of that rate, is certainly an extremely low rate.

Senator FORAKER. Then what you complain is that it is too low?

Mr. BACON. What I complain about is that there is too wide a

difference in the rates. In that way the miller is prevented from manufacturing the flour, and the consumer at the seaboard is compelled to pay double the freight that the consumer on the other side of the ocean pays for precisely the same service.

Senator FORAKER. If we remedy that by raising the rate on wheat, the farmer will be complaining, will he not?

Mr. BACON. Not unless the rate is unduly high.

Senator FORAKER. If we put it up to 25 cents—if we double the rate on wheat—would not the producer of wheat be complaining at once?

Mr. BACON. I do not think he would have ground for complaint if it is not an unreasonable rate.

Senator FORAKER. It would not be an unreasonable rate if the rate on flour is not unreasonable.

Mr. BACON. The rate of 25½ cents a hundred from Missouri River points to the Atlantic coast is a rate that nobody can complain of.

Senator FORAKER. So if they put that rate on wheat, for the same transportation, the farmer would not have any right to complain; but it would be double what he is paying now, and he certainly would be complaining, and would he not have a right to complain that you were depriving him of the benefit that the competition of the Gulf ports affords him? I want to get at how we are going to remedy this condition without putting the shoe that pinches simply from one foot onto another foot.

Mr. BACON. If you only consider the one party, the producer, I think you are entirely correct; but if you consider the whole people of the country at large, it seems to me that that can not be maintained, because the rate is not an unreasonable rate.

Senator FORAKER. Do you think it would help anybody except the railroads to put the rate on wheat up to 25½ cents?

Mr. BACON. It certainly would not help the producer.

Senator FORAKER. It would help the railroad?

Mr. BACON. It would help the railroad.

Senator FORAKER. You do not appear here in behalf of the railroads, as I understand it?

Mr. BACON. No, sir; but I wish to have the railroads have their due share of the benefit of the traffic.

Senator FORAKER. They seem to be getting less than that on wheat.

The CHAIRMAN. Are you not confusing the export rate on wheat with the domestic rate on flour when you mention 25½ cents and 13 cents? Are you sure of your figures?

Mr. BACON. The rates both on wheat and flour for domestic use at the seaboard is 25½ cents per hundred pounds from the Missouri River.

The CHAIRMAN. For domestic use but not for export?

Mr. BACON. Not for export. For export wheat it is one-half of that rate.

The CHAIRMAN. Thirteen cents?

Mr. BACON. Yes; and on flour I am not able to ascertain what the difference is, but it is very much less than the reduction on wheat.

The CHAIRMAN. I just wanted to get that clear.

Senator DOLLIVER. What is your personal judgment as to the wisdom, as a matter of public policy, of these rate concessions on exported merchandise?

Mr. BACON. There is reason for a difference in rates on exported products as compared with the rates on products for domestic use.

Senator DOLLIVER. Is there any way in which we could gauge or find a standard for that differential?

Mr. BACON. That is one of the things that it seems to me would come properly within the scope of the Interstate Commerce Commission, and it is one of the reasons why it is necessary to have an impartial body to determine the numerous questions which arise in relation to relative rates, of which this is one.

Senator FORAKER. I would like the benefit of your opinion right there, Mr. Bacon, if I do not interrupt you too much, as to whether or not these requirements of the interstate-commerce law that these through rates shall be published, and there shall be a delay of three days in reducing a rate and seven days in advancing it, are beneficial to our export trade, or whether they are not a handicap?

Mr. BACON. I do not think they have any detrimental effect upon it. I can not see that they have.

Senator FORAKER. Does not the publication of the rate and the publication of the portion that the railroad earns of the through rate tend to give to our competitors in ocean transportation the advantage of knowledge that it would be better for us if they did not have?

Mr. BACON. I can not see any detrimental effect arising from that.

Senator FORAKER. We were told by Mr. Hill when he was on the stand the other day that it had such a detrimental effect on him through the publication of rates in that way that he abandoned his effort to build up an export trade in flour to the Orient.

Senator NEWLANDS. He gave an instance of that.

Mr. BACON. Mr. Hill could not have done any export business in flour on the present crop of wheat, on account of the prevalence of high prices since it commenced to move.

Senator FORAKER. But that was earlier, before the short crop, that he was speaking of, as I understand it, though I am not certain about that, nor do I care about it; I only wanted the benefit of your opinion as compared with his opinion on that subject.

Mr. BACON. I heard Mr. Hill's testimony, and I was utterly unable to discover any reason why the publication of those rates should interfere with the export business over his line or over any other line.

The CHAIRMAN. I am informed that the export rate on flour from Chicago now is 15½ to 16 cents, and that it is 13 cents upon wheat. That is about where the Interstate Commerce Commission fixed it, is it not?

Mr. BACON. The export rate on wheat is 15½ cents?

The CHAIRMAN. Fifteen and a half to 16 cents upon flour.

Mr. BACON. From the Missouri River to the seaboard?

The CHAIRMAN. From Chicago.

Mr. BACON. I am speaking of the Missouri River points.

The CHAIRMAN. And it is 13 cents on wheat. The Omaha rate is the same.

Mr. BACON. It is a question whether it is the same on flour or not. The fact of its being the same from Chicago does not indicate that it is the same from Omaha.

The CHAIRMAN. I say the Omaha rate is the same as the Chicago rate on wheat.

Mr. BACON. I am not certain whether Chicago has the same——

The CHAIRMAN. I merely say that I have been informed by the people who make these rates that it is now what I have stated. I wanted to get that fact in the record. You may proceed.

Mr. BACON. I asked Mr. Bird if he could state what the export rate from the Missouri River to the Atlantic seaboard on flour is, and he said he could not. Now he has stated to you the rate from Chicago——

The CHAIRMAN. No; he did not state it to me at all.

Mr. BACON. Whoever has given you the rate from Chicago can probably give you the rate from the Missouri River.

Senator CULLOM. He did not give the rate on flour from the Missouri River.

Mr. BACON. Omaha is 500 miles west of Chicago, and it is certainly very strange if the rate from Omaha is the same as the rate from Chicago. I can see no reason why it should be.

The CHAIRMAN. You may proceed, Mr. Bacon.

Mr. BACON. Right in connection with this question of import and export rates, I wish to offer to the committee a quotation from a recent issue of the Journal of Commerce, of New York. This quotation is from an editorial in the Journal of Commerce of April 24.

Senator KEAN. By whom is that article written?

Mr. BACON. It is an editorial in the New York Journal of Commerce, a paper which has taken the railway side of this discussion. The article is as follows:

RAILROAD IMPORT RATES.

There is to be a conference to-day of officials of the trunk line railroads to consider import freight rates—that is, the inland charges for transporting imported merchandise from seaports to interior points. There is at present a discrimination in favor of these goods as against domestic articles of a like kind destined for the same markets, which is curiously inconsistent with the great "American policy" of protecting home industries against foreign competition. There is also discrimination between American seaports in dealing with this import traffic. From 3 to 8 cents less per hundredweight is charged from Baltimore than from New York for carrying imports to the same interior points, not because it costs less, but for the purpose of giving Baltimore what her "interests," railroad and otherwise, consider a fair share of the import trade. Here is another curious anomaly. The Constitution of the United States declares that "no preference shall be given, by any regulation of commerce or revenue, to the ports of one State over those of another." This is a restriction upon the power of Congress and the sovereign authority of the United States. The port of Baltimore can not be favored and its foreign trade can not be built up by being allowed lower duties or any other preference by the action of the Government. There can hardly be a more effective preference than in having a lower cost of transportation for imported goods. This the Government could not constitutionally allow through control of the railroads or of their rates, but it is assumed that the railroads can by agreement among themselves grant this preference. At all events, they have long been doing it.

Now New Orleans is claiming a differential of 10 per cent under the Baltimore rate on imported merchandise to Missouri River points. The railroads terminating at that port can charge any "reasonable rate" they choose, though they are forbidden to exercise any "unjust discrimination," but in no case are they the same railroads that have terminal at Atlantic ports. The differential or preferential rate can only be established and maintained by an agreement or combination between the eastern and the southern railroads. Would not that be a combination in restraint of trade or commerce among the several States, affecting also that with foreign nations? In short, would it not be in effect a regulation of such trade by railroad agreements, when the power is supposed to

reside exclusively in the Congress of the United States? This whole question of railroad agreements to establish differential rates in behalf of certain seaports or terminal points for the purpose of giving them preferences or advantages over others in building up their business and without regard to the relative cost of transportation to and from such places, is becoming a serious one. It is also a serious question whether those engaged in either export or import trade are entitled to discrimination or preference over those engaged in domestic trade in the matter of transportation over the same lines. It has been our tariff policy to put heavy charges upon foreign trade by duties on imports for the alleged benefit of domestic industry and internal traffic, but it is the railroad policy to burden domestic traffic for the relief of that with foreign countries. Neither policy is for the benefit of the country, though one offsets in some degree the effect of the other. The true policy would be to give both an equal chance under a fair system of equitable charges for actual service, so that industrial and commercial energies might have free play. Apart from that general consideration, all differential and preferential rates, intended to benefit one seaport or distributing point at the expense of another, are inconsistent with the policy of forbidding unjust discriminations and requiring fair and reasonable rates for all.

I simply read that to show that it is a question of public discussion as to the expediency of this wide difference between export and import rates as compared with domestic rates.

Senator DOLLIVER. Is this same discrimination made by the rates in favor of imports?

Mr. BACON. A similar discrimination is made. There is one case now before the Interstate Commerce Commission, brought by the plate glass organization of Pittsburg, in which it is shown that the import rate on glass is only about two-thirds of the rate charged on domestic glass from the seaboard to points in the interior of the country. They filed a complaint with the Commission against that discrimination.

I only refer to this whole subject to show to the committee the necessity of having a tribunal that can settle these disputed questions, these questions not only that relate to differences in rates, but that relate to questions of public policy. It seems utterly impossible to have such cases treated in the courts as they need to be treated.

Senator DOLLIVER. In your judgment, is that discrimination in favor of imported articles ever reasonable?

Mr. BACON. As I said before, I think there are cases in which there is good reason for a certain difference. What that difference should be I would not undertake to determine; but a board constituted as the Interstate Commerce Commission is constituted is capable of determining it, and we should have a suitable power to determine it.

Senator DOLLIVER. If it is against public policy to cut the rate on goods brought here from other countries, we could dispose of that by three lines in this bill, by saying that no greater rate should be charged on goods brought from other countries than is charged from the seaboard points on domestic goods.

Mr. BACON. It could be done if the committee deems it wise.

Senator DOLLIVER. I want to get at your idea of the public policy of such a provision.

Mr. BACON. That can certainly be determined by this committee and by Congress, but it is a question whether there may not advantages arise from a certain reasonable amount of difference between import rates and domestic rates, or between export rates and domestic rates.

Senator FORAKER. I understood you to say a while ago, unqualifiedly, that it was your opinion that there should be a discrimination?

Mr. BACON. It is my opinion that there should be a discrimination both on import and export rates. There are reasons for certain differences, but the question is what those differences should be; and there should be some body competent to determine the correctness of those differences and the justice of those differences.

Senator NEWLANDS. Mr. Bacon, you said that you did not think it would be wise to modify the provision of the law requiring three days' publication of an export rate when it was reduced and ten days when it was advanced. Were you here when Mr. Hill testified regarding the transaction of the trade of Hongkong?

Mr. BACON. I was; yes, sir.

Senator NEWLANDS. He stated that parties at Hongkong were bidding for this rate and that his road proposed to put a through rate to Hongkong, making use, of course, of their steamers from Seattle, and that to publish that rate would simply give their competitors notice that it would take at least seven days to conduct the negotiations by cable, and so forth, and three days more for the publication, which would give them ten days in which they could beat them.

Senator FORAKER. It would give them seventeen days in the case of an advance.

Mr. BACON. I observed that statement, but I fail to see the force of it. I do not claim to be as familiar with the circumstances of that case as Mr. Hill is, however.

Senator NEWLANDS. Does not the case of ocean export differ from the ordinary case of railroad transportation? The rates on the ocean are changing every day, on account of such influences as tramp steamers, and so forth. Does not that require quick negotiation in order to enable a railroad company to combine with water transportation in such a way as to enable it to bid?

Mr. BACON. Those rates are changing at the Atlantic seaboard as well as at the Pacific seaboard, and the lines that are doing business on the Atlantic coast have never complained of any serious difficulty arising from this requirement of the interstate-commerce act, so far as I have learned.

Senator FORAKER. Has it not practically, to the knowledge of everybody, driven us out of the ocean transportation business, so far as doing any business by these companies over their own lines is concerned?

Mr. BACON. It is not the rail rates in this country that have diminished the traffic on the ocean.

Senator FORAKER. I am not talking about the rail rates, but about the ocean transportation rates. If you publish what the through rate is and what portion of that is the railroad rate, then you advertise to every competing transportation line on the ocean exactly what they have got to meet. In the case put by Mr. Hill there was a subsidized Japanese line. He said the subsidy was sufficient to pay all the expenses of operating the line, so that if it got nothing on the freight it was not losing any money to carry it; and when they knew exactly what the rate was and had seventeen days in which to figure on the competing rate, they could in every instance take the freight away from him.

Mr. BACON. There may be difficulties on the Pacific coast that do

not exist on the Atlantic coast; but this interstate-commerce law has been in effect for eighteen years, and this requirement of three days' notice of the reduction of a rate and ten days' notice of the advance of a rate has never been brought forward, as far as I have observed, by the railway people as seriously detrimental to them in connection with their export or import trade on the Atlantic coast.

The CHAIRMAN. I think we had better adhere to our rule as to deferring questions by members of the committee until after the witness has finished his direct statement. That is almost new matter that has just been brought out. Proceed with your statement, Mr. Bacon.

Mr. BACON. I would like to read one more extract bearing on this question from the New York Evening Post of April 29. It is headed "Rate making the pivotal question." This is an extract from a long article in relation to this question of legislation. It states:

With unified railroad control or railroad monopoly the question of rate making becomes controlling. Is ultimate authority in this particular, except as affected by an appeal to the courts under old common-law rights, to rest absolutely with the railroads themselves, or is the public, through some chosen instrumentality, to share in reaching these final decisions? This is the point upon which, according to the present outlook here, the break is coming. All other questions are incidental. The railroads are putting up a nearly solid front against any lessening of their present authority. It is not in human nature to relinquish power. It may be argued that, aside from this loss of power, the railroads are more scared than hurt.

It is probably known to the committee that about two years ago the Dominion of Canada adopted a very stringent railway-regulation law.

Senator CULLOM. Is that law in force yet?

Mr. BACON. It is now in force. It is only two or three years since it was established. I think it is two years ago only. This article refers to it as not having produced the disastrous effects which had been predicted and which are being predicted by the railway interests of this country in case of the Government assuming the right to revise and correct rates found to be wrong.

Senator CULLOM. The two roads in Canada, the Grand Trunk and the Canadian Pacific, are all that are operating, are they not?

Mr. BACON. They are the principal roads.

Senator CULLOM. They practically rule the country?

Mr. BACON. They are the principal roads, but there are several others, and the mileage in Canada in proportion to its population and its extent approaches very closely to that in this country.

Senator CULLOM. One of the roads is owned by the Dominion government itself?

Mr. BACON. Yes; that is well understood.

Senator CLAPP. Is not the reverse of that true?

Senator CULLOM. That the roads own the government. Is that what you mean?

Senator CLAPP. Yes.

Senator CULLOM. I suppose that is as near right as the other.

Mr. BACON. I will continue with this extract, if you please [continuing reading]:

The Canadian experiment in railroad rate control has not worked disadvantageously to the railroad lines. No sane President will appoint to a revived Interstate Commerce Commission anarchists, nor would a Senate confirm them. If, however, such men made decisions, railroad interests adversely affected

could go to the Supreme Court, which is not likely to be carried by the Populists in this generation, and secure protection against rates which were confiscatory. Moreover, railroad earnings affect so vitally railroad employees, insurance companies, and savings banks that no real hardship to the railroad interests of America would be permitted.

Senator CULLOM. As a matter of fact, have there been any new rates at all made in Canada under the new law?

Mr. BACON. I have not observed the working of the rates in Canada. I have simply observed the fact of the enactment of a very stringent railroad law, which I read carefully at the time, and regarded when I read it as a more stringent law than any that I had come across in this country.

Senator KEAN. There is a copy of that law here.

Senator DOLLIVER. Mr. Tuttle testified that this Canadian commission had not, up to this time, organized and gone about the business and the exercise of the duties conferred upon it by that new Canadian statute.

Mr. BACON. I am not aware to what extent that has been done.

In referring yesterday to the demands which exist for this legislation I referred only to the demand existing on the part of commercial organizations, which I stated existed throughout the entire country on the part of such organizations to the number of upward of 500. That covers, I will state now, every State in the Union with the exception of one, and two of the Territories of the Union—Oklahoma and the Indian Territory.

In addition to that, I wish to refer to the extent to which the several States have enacted legislation of this character. Thirty-one States have already established commissions, and many of them have been in operation for many years. Included in that number is the State of Indiana, which enacted such legislation during the present session of its legislature, only a few weeks ago. The State of Wisconsin has been endeavoring for the past four years to secure such legislation, and has finally reached a point where a bill has passed the assembly by a vote of 75 to 12, and is now before the senate. The bill has just been unanimously favorably reported by the senate committee, and will come before the senate for action in a few days, with every probability of its being passed. I refer to that only to show the extent throughout the entire country of the desire of the people for regulation of railway rates, for some power in some final ultimate tribunal by which the questions in dispute between the people and the carriers can be determined in a disinterested and fair way. This comprises, as you will observe, nearly all the States of this Union; but their action governs only intrastate business, which is but a small proportion—it is uncertain how much, but certainly less than half of the traffic of each of the States—that is, a half or upward of the traffic is interstate traffic. So that while these States have been at work, one after another, during the past thirty years in establishing control over freight rates within their own State, they have only reached less than half, and in some cases probably not more than a quarter, of the traffic in which they are directly interested.

All these States are seeking, and have been seeking for a long time, national legislation which would secure the necessary control over the interstate traffic which they have provided for themselves

over the intrastate traffic. And in that connection I wish to call the attention of the committee to the fact that during the last two years eighteen State legislatures have passed joint resolutions memorializing Congress to enact this legislation. During the past winter there have been twelve States that have passed such resolutions that have memorialized Congress and that have requested their respective Representatives and Senators to secure the enactment of such legislation.

Senator FORAKER. Can you tell us, Mr. Bacon, if it is not interrupting you too much, how they came to pass those resolutions; whether or not they were solicited to do so by anyone?

Mr. BACON. I am not aware of their having been; but it is very strange if the legislatures of twenty States can, through solicitation of others, be led to memorialize Congress for certain legislation unless there is a demand existing among the people at large, the citizens of those States. It is not to be supposed that under the solicitation of anybody they would adopt such resolutions.

Senator FORAKER. I think we all know that it is not strange at all that a legislature in a question of that kind can be induced by solicitation, if it appears to be a plausible proposition, to pass resolutions memorializing Congress.

Mr. BACON. Not by outside solicitation, certainly.

Senator FORAKER. I mean by some body, such as the association you represent, for instance, going to the legislature or appealing to some association within a State, through your association, it could come about in a very easy way. I am not trying to disparage the effect of it. I only want to know whether they took it up on their own motion, simply because they recognized that there was some evil to be remedied, or whether their attention was called to it by somebody.

Mr. BACON. I think it very probable that the commercial organizations throughout the country that have been interested in this movement during the past four or five years have had a hand in bringing about such action by the legislatures of the several States.

Senator FORAKER. I have seen that statement made, and I thought it was probably true. They had a perfect right to apply to the legislatures, and it was the business of the legislatures not to do it unless they wanted to. I wanted to know what the fact was.

Mr. BACON. To what extent it has been brought about through the commercial organizations I am not aware.

Senator CULLOM. I wish to ask one question in relation to what you have just said, that is suggested by one of the gentlemen here. Have these 30 or 31 States that you have mentioned nearly all passed laws giving the State commissions absolute power to make the intrastate rates?

Mr. BACON. The regulations in the several States vary greatly, all the way from the absolute fixing of all the rates in the State to the fixing of no rates at all, leaving the Commission simply the power to investigate and recommend.

Senator KEAN. Then your statement is not an accurate one?

Mr. BACON. The statement that the States have enacted some regulation of railway rates is accurate. It is modified, however, by the degree to which that regulation extends. Previous to this last winter there were 30 States that had legislated upon this subject; including *Indiana the number* is 31, as Indiana has just adopted such legisla-

tion. In 21 of these States the rates are absolutely under the control of the commission, either by means of fixing the rates themselves or by prescribing schedules of maximum rates which shall not be exceeded in the fixing of rates.

Senator CULLOM. I think that statement is very proper to be made in connection with your statement of the number of States that have adopted legislation on the subject.

Senator FORAKER. What is the accurate technical name of the association that you represent?

Mr. BACON. It is simply a convention. It is not an association. It is a convention of delegates from commercial organizations.

Senator FORAKER. Throughout the whole country?

Mr. BACON. Throughout the whole country. It has held two meetings—one four years ago last fall and one last October, in the city of St. Louis—and at each of those conventions an executive committee was appointed to promote this desired legislation.

Senator FORAKER. And you were put at the head, as chairman of that executive committee?

Mr. BACON. I was made chairman of that executive committee at both those conventions.

Senator FORAKER. And ever since that step was taken you have been active, have you not, Mr. Bacon, in bringing the subject to the attention of commercial bodies and legislatures and everybody else, as well as before Congress?

Mr. BACON. I have endeavored to discharge the responsibility placed upon me of promoting the legislation.

Senator FORAKER. They made a considerable appropriation to defray expenses and all that sort of thing, did they not?

Mr. BACON. The associations have contributed various sums, as they saw fit, toward the expenses incurred in the publication——

Senator FORAKER. I am not finding fault with it at all. I just want to get at the facts.

Mr. BACON. That is the way it has been carried on.

Senator FORAKER. I saw the statement the other day that the convention you represent appropriated, I think it was, $25,000.

Mr. BACON. That is altogether a mistake. It could not properly be termed an appropriation, because the convention had no funds to appropriate; but the representatives of the various organizations who had delegates at that convention volunteered, on behalf of their respective associations, various amounts. The aggregate, as I recollect, was in the neighborhood of $7,000.

Senator FORAKER. All to be used in preparing and distributing literature on the subject and defraying expenses, I suppose?

Mr. BACON. And distributing it—for postage, etc.

Senator FORAKER. I did not refer to it to criticise it at all, but only to correct the statement that I saw, if it could be corrected. So the amount was not $25,000, but about $7,000?

Mr. BACON. About $7,000 was the amount contributed or volunteered at that convention.

In reply to Senator Cullom's question as to what this legislation that the various legislatures memoralized Congress to enact was, I would say that it was simply that this power should be conferred upon the Commission; that when it had found a rate to be unrea-

sonable or discriminative, after full investigation, it should be empowered to go a step further and state what change should be made in that rate, and that that change should become immediately operative.

Senator FORAKER. I want to ask another question. Do you know of a single instance where a legislature has adopted these resolutions where there has been any debate preceding the action of the legislature on the subject?

Mr. BACON. I have not had information as to their progress through the two branches of the legislature in any single instance.

Senator FORAKER. I have been watching it a little and looking it up a little, and I have not yet found an instance where the resolution was not apparently prepared by somebody outside of the legislature, brought to the legislature, introduced in the legislature, and passed by the legislature without a word of debate. I do not know of a case, and I have not found one, where it was referred to a committee before being voted upon.

Mr. BACON. I could not inform you in regard to that. I simply say that as far as this committee is concerned of which I am chairman it has had nothing whatever to do with the promoting of the passage of these resolutions. They have been passed under the suggestion and urgency of the commercial organizations located within the several States.

Senator FORAKER. Which organizations were represented at this convention that appointed you?

Mr. BACON. Largely; yes, sir.

Senator FORAKER. I only wanted to get at the facts; that is all.

Senator CULLOM. I would like to know this, Mr. Bacon: As I understand it, you represent numerous organizations which expressed themselves in a convention which appointed you as chairman of the executive committee, and you are looking after their views and interests. What I want to know is, while your organization comes here through you and asks the committee to recommend that the Congress shall authorize the Interstate Commerce Commission to make rates, is it or not true that the National Board of Trade took the opposite view?

Mr. BACON. The National Board of Trade took a qualified view——

Senator CULLOM. Yes.

Mr. BACON. And the qualification was this: That the rates when fixed by the Commission should not go into effect until confirmed by the court. The desire of the interstate commerce law convention was that the rates fixed by the Commission should go into immediate effect and should remain until overturned by the courts, which is precisely the position which is recommended by the President in his recent message.

Senator CULLOM. You were on the committee that reported this resolution recommending a qualified power for the Commission, were you not?

Mr. BACON. The National Board of Trade is an entirely distinct organization, and has no connection with the interstate commerce law convention. It is not amenable to the interstate commerce law convention, nor is the interstate commerce law convention amenable to it.

Senator KEAN. What is the interstate commerce law convention amenable to? Anything?

Mr. BACON. It is a purely voluntary convention, called together expressly for the purpose of the consideration of this subject. Referring to the board of trade, I will say that that board consists of delegates from various commercial organizations in all parts of the country, but the number of organizations represented in the National Board of Trade is only between 40 and 50. At the last meeting of the National Board of Trade the number of organizations represented was, according to my impression, 42 or 43. It varies from year to year. It will sometimes reach as high as 50 or upward, but it represents a comparatively small proportion of the commercial organizations of the country, whereas this interstate-commerce law convention comprises nearly all the organizations of that character in the country of any importance.

Senator CULLOM. You attended the National Board of Trade, did you not?

Mr. BACON. I was present as a delegate; yes, sir.

Senator CULLOM. And these resolutions which were passed by these organizations or local boards of trade were revised, were they not, by this National Board of Trade?

Mr. BACON. No, sir. The two bodies had no connection with each other.

Senator FORAKER. Is that difference of opinion between the National Board of Trade and the body which you represent an irreconcilable difference?

Mr. BACON. The convention that I represent expressed itself very emphatically in the adoption of a petition to Congress, and I have a copy of that here, and would like to read it. It is brief and directly to the point, and will show exactly the purpose and desire of that convention.

A petition by the interstate-commerce law convention held at St. Louis, Mo., October 28 and 29, 1904.

To the Congress of the United States:

The undersigned commercial, mercantile, manufacturing, and agricultural organizations, embracing various branches of trade and industry throughout the United States, duly authorized delegates from which assembled in convention in the city of St. Louis, Mo., on the 28th day of October, 1904, for the purpose of urging upon Congress the speedy enactment of such legislation as will afford relief from unjust discrimination in tariff rates established by the railway corporations of the country, resulting in undue preference and advantage to certain localities and sections and certain descriptions of traffic, and consequent undue prejudice and disadvantage to others; and will also provide effectual means of protection to the public from the imposition of unreasonable and oppressive charges for the performance of public service in the transportation of passengers and property as common carriers under franchises granted by the people; all of which is in violation of the act to regulate commerce, approved February 4, 1887, the provisions of which, as interpreted by the Supreme Court of the United States, have proved ineffectual to prevent such violation; do hereby respectfully petition your honorable body to speedily enact such legislation as will insure the enforcement of the primary requirement of the aforesaid act, namely, that "all charges for any service rendered or to be rendered in the transportation of passengers or property, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just."

And your petitioners further pray that this legislation be given the precedence over other pending legislation which its great public importance demands.

It is the sense of this convention that the Interstate Commerce Commission, created by the aforesaid act "to execute and enforce the provisions of the act," should be invested with authority, upon full hearing of any formal complaint

to prescribe reasonable and equitable rates to be substituted by the carrier in place of those found to be unreasonable or discriminative; the order of the Commission in such case to become operative upon due notice to the carrier and so continue until set aside by the court of last resort, unless upon review in the circuit court of the United States it is found that such order clearly proceeds upon some error of law.

DELEGATES.

NATIONAL AND SECTIONAL ORGANIZATIONS.

American Shippers' Association.—L. T. Jamme, Chicago, Ill.; E. E. Williamson, Cincinnati, Ohio.

American Short Horn Breeders' Association.—W. A. Harris, Chicago, Ill.

Cattle Growers' Interstate Executive Committee.—Murdo Mackenzie, Trinidad, Colo.; W. A. Harris, Chicago, Ill.; A. E. de Ricqles, Denver, Colo.; Alex. Bowie, Chugwater, Wyo.; M. M. Sherman, Geneseo, Kans.; A. L. Ames, Buckingham, Iowa; W. G. Comstock, Ellsworth, Nebr.; H. C. Wallace, Des Moines, Iowa.

Central Yellow Pine Association.—Geo. S. Gardiner, Laurel, Miss; I. C. Enoch, Jackson, Miss.

Manufacturers' Association of the Northwest.—G. H. McIsaac, Portland, Oreg.

Millers' National Association.—C. B. Cole, Chester, Ill.

Millers' National Federation.—L. T. Jamme, Chicago, Ill.; H. T. Bradley, New York City; Wm. N. Rowe, Grand Rapids, Mich.; C. C. Bovee, Minneapolis, Minn.

Mississippi and Louisiana Lumber Dealers' Association.—W. G. Harlow, Yazoo City, Miss.

National Board of Trade.—J. T. McHugh, Cincinnati, Ohio; F. A. Scott, Cleveland, Ohio; N. B. Kelly, Philadelphia, Pa.

National Dining Table Association.—H. A. Higby, Charlotte, Mich.

National Farmers' Exchange.—F. E. Andrews, Sterling, Ill.; A. G. Van Patten, Van Patten, Ill.

National League of Commission Merchants.—John C. Scales, Chicago, Ill.; C. B. Ayres, Chicago, Ill.

National Live Stock Association.—John W. Springer, Denver, Colo.; Fred. P. Johnson, Denver, Colo.; John W. McMillan, Boise, Idaho; F. J. Hagenbarth, Salt Lake City, Utah; Murdo Mackenzie, Trinidad, Colo.

National Lumber Manufacturers' Association.—C. I. Millard, St. Louis, Mo.; W. B. Stillwell, Savannah, Ga.; W. C. Perry, Kansas City, Mo.

National Paint, Oil, and Varnish Association.—J. W. Bray, St. Louis, Mo.; John S. Klein, St. Louis, Mo.; H. H. Clark, St. Louis, Mo.

National Retail Grocers' Association.—Simon Clark, Duluth, Minn.

National Wholesale Druggists' Association.—Theo. F. Meyer, St. Louis, Mo.; C. H. West, St. Louis, Mo.

National Wholesale Lumber Dealers' Association.—Robt. W. Higbie, New York City.

National Wool Growers' Association.—Mortimer Levering, Chicago, Ill.

New England Shoe and Leather Association.—Geo. F. Daniels, Boston, Mass.

North Carolina Pine Association (comprising North and South Carolina and Virginia).—W. J. Edwards, Sanford, N. C.; R. S. Cohn (alternate), Norfolk, Va.

Pacific Coast Hardware and Metal Association.—H. J. Morton, San Francisco, Cal.

Pacific Coast Jobbers and Manufacturers' Association.—H. D. Loveland, San Francisco, Cal.

Southeastern Millers' Association.—W. R. Donnelly, Nashville, Tenn.

Southern Hardware Jobbers' Association.—W. E. Newill, Atlanta, Ga.

Southwestern Lumbermen's Association.—S. H. Fullerton, St. Louis, Mo.; E. C. Robinson, St. Louis, Mo.; E. R. Darlington, St. Louis, Mo.; J. A. Rehels, St. Louis, Mo.; E. R. Burkholder, Hillsboro, Kans.; J. E. Evans, Emporia, Kans.; Harry A. Gorsuch, Kansas City, Mo.

Southwestern Mercantile Association.—Dr. L. E. Lehmberg, St. Louis, Mo.; H. J. Bube, St. Louis, Mo.; Robt. Feickert, St. Louis, Mo.

Trans-Mississippi Commercial Congress.—R. C. Kerens, St. Louis, Mo.; H. R. Whitmore, St. Louis, Mo.

Travelers' Protective Association of America.—W. A. Kirchhoff, St. Louis, Mo.; Louis Rosen, St. Louis, Mo.; W. N. McConkin, St. Louis, Mo.; W. R. Johnson, Knoxville, Tenn.; J. C. Simering, Baltimore, Md.; Jerry Porter, Clinton, Ky.; Horace C. Starr, Indianapolis, Ind.; Louis T. La Beaume, St. Louis, Mo.

Western Fruit Jobbers' Association.—H. J. Streight, Omaha, Nebr.
Winter Wheat Millers' League.—M. S. Blish, Seymour, Ind.; M. H. Davis, Shelby, Ohio.
Wholesale Saddlery Association of the United States.—John B. Denvir, St. Louis, Mo.; Louis Ploesser, St. Louis, Mo.

STATE AND LOCAL ORGANIZATIONS.

ALABAMA.

Birmingham Board of Trade.—J. A. Van Hoose.
Huntsville Wholesale Grocers' Association.—R. E. Pettus, Huntsville, Ala.

ARKANSAS.

Fort Smith Traffic Bureau.—J. E. Hundley, Fort Smith, Ark.
Gentry Fruit Growers' Association.—G. R. Maxon, Gentry, Ark.
Judsonia Fruit and Vegetable Growers' Association.—L. M. Pyles, Judsonia, Ark.; H. J. Winn, Judsonia, Ark.
Little Rock Board of Trade and *Little Rock Merchants' Freight Bureau.*—A. R. Bragg, Little Rock, Ark.; Jas. J. Mandlebaum, Little Rock, Ark.
Texarkana Commercial Club.—J. L. Turner, Texarkana, Ark.
Texarkana Freight Bureau and *Texarkana Wholesale Grocers' Association.*—R. L. Spencer, Texarkana, Ark.

CALIFORNIA.

State delegates.—C. B. Boothe, Los Angeles, Cal.; Frank Wiggins, Los Angeles, Cal.; W. H. Wellbye, Oakland, Cal.; J. A. Filcher, San Francisco, Cal.; A. C. Rulofson, San Francisco, Cal.
California State Board of Trade and *California Manufacturers and Producers' Association.*—H. D. Loveland, San Francisco, Cal.
Highland Orange Growers' Association.—Seth Marshall, San Bernardino, Cal.
Humboldt County Chamber of Commerce.—J. C. Loreren, Eureka, Cal.
Los Angeles Chamber of Commerce.—Frank Wiggins, Los Angeles, Cal; F. W. King, Los Angeles, Cal.
Oakland Board of Trade.—A. V. Feight, Oakland, Cal.; W. H. Taylor, Oakland, Cal.
Oakland Merchants' Exchange.—W. H. Wellbye, Oakland, Cal.
Sacramento Board of Trade.—J. G. Martine, Sacramento, Cal.; J. H. Devine, Sacramento, Cal.
Sacramento Chamber of Commerce.—J. G. Martine, Sacramento, Cal.; J. H. Devine, Sacramento, Cal.
San Bernardino Board of Trade.—Seth Marshall, San Bernardino, Cal.
San Diego Chamber of Commerce.—Ed. Fletcher, San Diego, Cal.
San Francisco Chamber of Commerce and *San Francisco Merchants' Exchange.*—H. D. Loveland, San Francisco, Cal.

COLORADO.

Colorado State Realty Association.—George J. Kindel, Denver, Colo.; Fred H. Coe, Denver, Colo.
Denver Real Estate Exchange and *Denver Chamber of Commerce and Commercial Club.*—George J. Kindel, Denver, Colo.

CONNECTICUT.

Connecticut State Grange, Patrons of Husbandry.—O. S. Wood, Ellington, Conn.

GEORGIA.

Georgia Interstate Saw Mill Association.—H. H. Tift, Tifton, Ga.; William B. Stillwell, Savannah, Ga.
Atlanta Chamber of Commerce.—Robert F. Maddox, Atlanta, Ga.
Atlanta Freight Bureau.—W. E. Newill, Atlanta, Ga.

IDAHO.

Idaho Lumber Dealers' Association.—W. R. Kivett, Boise, Idaho.

ILLINOIS.

Illinois Millers' State Association.—E. C. Kreider, Jacksonville, Ill.; H. B. Sparks, Alton, Ill.

Illinois State Grange, Patrons of Husbandry.—G. R. Tate, Belleville, Ill.; W. J. Miller, Belleville, Ill.; D. Q. Trotter, Jerseyville, Ill.

Southern Illinois Millers' Association.—J. L. Grigg, Sparta, Ill.; A. J. Meek, Marissa, Ill.

Anna Fruit Growers' Association.—E. G. Davies, Chicago, Ill.

Cairo Board of Trade.—H. E. Halliday, Cairo, Ill.

Chicago Board of Trade.—John T. Sickel, Chicago, Ill.; R. S. Lyon, Chicago, Ill.; Richard Gambrill, Chicago, Ill.

Quincy Freight Bureau.—L. B. Boswell, Quincy, Ill.

Rockford Grocers' Association.—J. E. Broadie, Rockford, Ill.; William Lawton, Rockford, Ill.

Illinois Travelers' Protective Association.—M. H. Seed, Danville, Ill.; Thad. P. Howe, Chicago, Ill.

INDIANA.

Indiana Grain Dealers' Association.—C. B. Riley, Indianapolis, Ind.

Indiana Millers' State Association.—C. J. Pickering, Middletown, Ind.

Indiana Shippers' Association and Shippers' Protective League of Indiana.—D. T. Bacon, Indianapolis, Ind.

Travelers' Protective Association of Indiana.—R. M. Millican, Evansville, Ind.; L. P. Colenbaugh, Vincennes, Ind.; James R. Crawford. New Albany, Ind.; H. M. Campbell, Columbus, Ind.; E. A. Kiefner, Terre Haute, Ind.; Harmon Meyer, Richmond, Ind.; Riley Hunt, Indianapolis, Ind.; J. G. Thomas, Muncie, Ind.; D. A. Coulter, Frankfort, Ind.; C. G. Yelm, Lafayette, Ind.; Andrew Jackson, Marion, Ind.; Charles Falk, Fort Wayne, Ind.; L. P. Hardy, South Bend, Ind.; W. H. Wiley, Marion, Ind.

Fort Wayne Commercial Club and Fort Wayne Merchants' Exchange.—Theo. F. Thieme, Fort Wayne, Ind.

Indianapolis Board of Trade.—Frank M. Murphy, Indianapolis, Ind.

Lafayette Commercial Club.—C. G. Yelm, Lafayette, Ind.

Lafayette Merchants' Association.—Edgar C. Collins, Lafayette, Ind.

IOWA.

Corn Belt Meat Producers' Association of Iowa.—G. W. Maher, Fort Dodge, Iowa; Frederic Larrabee, Fort Dodge, Iowa.

Iowa Grain Dealers' Association.—George A. Wells, Des Moines, Iowa.

Iowa State Manufacturers' Association.—A. C. Hutchins, Des Moines, Iowa; W. W. Marsh, Waterloo, Iowa.

Cedar Rapids Commercial Club.—A. N. Palmer, Cedar Rapids, Iowa.

Chariton, Noxall Club.—Walter C. Gookin. Chariton, Iowa.

Des Moines Commercial Exchange.—A. C. Hutchins.

Dubuque Shippers' Association.—W. B. Martin, Dubuque, Iowa.

Oskaloosa Commercial Club.—Charles Huber, Oskaloosa, Iowa.

KANSAS.

Kansas Federation of Commercial Interests.—Harry McMillan, Minneapolis, Kans.; M. M. Sherman, Geneseo, Kans.; J. E. Howard, Wichita, Kans.; H. O. Bradley, Clyde, Kans.; H. L. Resing, Wichita, Kans.

Kansas Grain Dealers' Association.—L. Cortelyou, Muscotah, Kans.

Southern Kansas Millers' Commercial Club.—F. D. Stevens, Wichita, Kans.

Arkansas City Commercial Club.—A. L. Newman, Arkansas City, Kans.

Emporia Business Men's Association.—J. E. Evans, Emporia, Kans.

Russell Commercial Club.—M. K. Brundage, Russell, Kans.

Topeka Commercial Club.—James A. Troutman, Topeka, Kans.

Wichita Chamber of Commerce.—J. E. Howard, Wichita, Kans.

Wichita Commercial Club.—J. H. Turner, Wichita, Kans.

Wichita Traffic Bureau.—H. L. Resing, Wichita, Kans.

KENTUCKY.

Travelers' Protective Association of Kentucky.—Charles P. Frick, Louisville, Ky.

Louisville Lumbermen's Club.—C. H. Callahan, Louisville, Ky.

LOUISIANA.

Louisiana Ponchatoula Farmers' Association.—William S. Keaghey.

MASSACHUSETTS.

Boston Fruit and Produce Exchange.—George F. Mead, Boston, Mass.
Lowell Board of Trade.—J. L. Chalifoux, Lowell, Mass.

MICHIGAN.

Michigan Hay Association.—George C. Warren, Saginaw, Mich.
Michigan State Millers' Association.—Harry E. Hooker, Lansing, Mich.
Grand Rapids Board of Trade.—W. N. Rowe, Grand Rapids, Mich.; George A. Davis, Grand Rapids, Mich.; George G. Whitworth, Grand Rapids, Mich.; H. D. C. Van Asmus, Grand Rapids, Mich.; Abraham May, Grand Rapids, Mich.

MINNESOTA.

Minnesota Millers' Club.—L. H. Pinney, Minneapolis, Minn.
Duluth Board of Trade.—George F. Piper, Minneapolis, Minn.
Duluth Branch of L. S. Meat Dealers' Association.—A. J. Milner, Duluth, Minn.
Duluth Commercial Club.—E. M. Ferguson, Duluth, Minn.; R. S. Powell, Duluth, Minn.
Duluth Produce and Fruit Exchange.—E. M. Ferguson, Duluth, Minn.
Duluth Retail Grocers' Association.—Simon Clark, Duluth, Minn.
Minneapolis Chamber of Commerce.—G. F. Piper, Minneapolis, Minn.; G. D. Rogers, Minneapolis, Minn.
Minneapolis Millers' Club.—C. C. Bovey, Minneapolis, Minn.
Red River Millers' Club.—E. Van Houten, Moorhead, Minn.
St. Paul Chamber of Commerce.—R. A. Kirk, St. Paul, Minn.; Gen. M. D. Flower, St. Paul, Minn.
South St. Paul Live Stock Exchange.—H. B. Carroll, South St. Paul, Minn.

MISSISSIPPI.

Natchez Cotton and Merchants' Exchange.—J. W. Roos, Natchez, Miss.

MISSOURI.

Missouri Retail Stove and Hardware Dealers' Association.—J. W. Poland, Carrollton, Mo.
Missouri Retail Merchants' Association.—John H. Gundlach, St. Louis, Mo. R. R. McIntyre, Hannibal, Mo.; Robert E. Lee, St. Louis, Mo.; Charles F. Busche, St. Louis, Mo.; Lorenz F. Padberg, St. Louis, Mo.; W. E. Sullivan, St. Joseph, Mo.; James Clausen, St. Louis, Mo.; George A. Bond, Kansas City, Mo.; Fred. Busche, St. Louis, Mo.
Travelers' Protective Association of Missouri.—Richard Hanlon, J. H. Barsachs, W. P. Moss, H. M. Schissler, J. H. Stafford, F. H. Blankenmeister, F. Herkert, H. W. Belding, F. W. Crandall.
Gashland Fruit Growers' Association.—W. T. Williams, Gashland, Mo.
Kansas City Board of Trade.—J. E. Seaver, Kansas City, Mo.
Pierce City Fruit Growers' Association.—R. F. George, Pierce City, Mo.
St. Joseph Commercial Club.—F. W. Maxwell, St. Joseph, Mo.
St. Louis Business Men's League.—Harvey L. Christie, St. Louis, Mo.; Elias Michael, St. Louis, Mo.; W. K. Kavanaugh, St. Louis, Mo.
St. Louis Cotton Exchange.—L. L. Prince, St. Louis, Mo.
St. Louis Fruit and Produce Exchange.—F. W. Brockman, St. Louis, Mo.; William G. Mueller, St. Louis, Mo.; L. Garvey, St. Louis, Mo.
St. Louis Manufacturers' Association.—H. F. Vogel, St. Louis, Mo.; E. S. Ware, St Louis, Mo.
St. Louis Merchants' Exchange.—E. O. Standard, St. Louis, Mo.; C. H. Seybt, St. Louis, Mo.; O. L. Teichmann, St. Louis, Mo.; W. P. Kennett, St. Louis, Mo.; H. F. Langenberg, St. Louis, Mo.; E. S. Tompkins, St. Louis, Mo.; W. H. Danforth, St. Louis, Mo.
St. Louis Stove Manufacturers' Association.—E. S. Ware, St. Louis, Mo.

NEW YORK.

New York State Fruit Growers' Association.—J. G. Patterson, Sheridan, N. Y.
Buffalo Lumber Exchange.—F. W. Vetter, Buffalo, N. Y.

New York Manufacturers' Association.—James T. Holle, Brooklyn, N. Y.; George T. Moon, Brooklyn, N. Y.

Rochester Chamber of Commerce.—Thomas B. Dunn, Rochester, N. Y.; J. M. Ives, Rochester, N. Y.

Utica Chamber of Commerce.—Oscar F. Foster, Utica, N. Y.; Edmund L. Munson, Utica, N. Y.

OHIO.

Ohio Grain Dealers' Association.—C. B. Jenkins, Marion, Ohio.

Ohio State Millers' Association.—C. B. Jenkins, Marion, Ohio; John W. Burk, Springfield, Ohio.

Cincinnati Chamber of Commerce.—B. W. Campbell, Cincinnati, Ohio.

Cincinnati Receivers and Shippers' Association.—E. E. Williams, Cincinnati, Ohio.

Toledo Produce Exchange.—W. H. Morehouse, Toledo, Ohio.

Youngstown Builders' Exchange.—Edward Walton, Youngstown, Ohio.

OKLAHOMA.

Oklahoma Live Stock Association.—W. E. Bolton, Woodward, Okla.

Oklahoma Millers' Association.—George G. Sohlberg, Oklahoma City, Okla.

Oklahoma Traffic Association.—J. H. Johnston, Oklahoma City, Okla.

OREGON.

Oregon Live Stock Breeders' Association.—W. H. Wehrung, Hillsboro, Oreg.; Frank Williams, Portland, Oreg.; Jefferson Myers, Portland, Oreg.; Gilbert Scott, Milwaukee, Oreg.; Layton Wisdom, Portland, Oreg.; J. P. Marshall, Portland, Oreg.

Portland Board of Trade.—Hon. C. W. Nottingham, Portland, Oreg.; A. F. Biles, Portland, Oreg.; F. E. Beach, Portland, Oreg.

Portland Chamber of Commerce.—C. H. McIsaac, Portland, Oreg.

PENNSYLVANIA.

Philadelphia Commercial Museums.—W. P. Wilson, Philadelphia, Pa.

Hardware Merchants and Manufacturers' Association.—Hugh McCaffrey, Philadelphia, Pa.

Philadelphia Trades League.—N. B. Kelly, Philadelphia, Pa.; Doctor Wilson, Philadelphia, Pa.

Pittsburg Chamber of Commerce.—A. P. Burchfield, Pittsburg, Pa.

Scranton Board of Trade.—J. A. Lansing, Scranton, Pa.

SOUTH CAROLINA.

Charleston Bureau of Freight and Transportation.—H. R. Jackson, Charleston, S. C.

TENNESSEE.

White County Live Stock Association.—J. F. Wilhoite, Sparta, Tenn.; J. O. Snodgrass, Sparta, Tenn.

TEXAS.

Texas Cattle Raisers' Association.—John T. Lytle, Fort Worth, Tex.; J. H. P. Davis, Richmond, Tex.; I. T. Pryor, San Antonio, Tex.; M. B. Pulliam, San Angelo, Tex.; Dr. E. B. Frazier, Vinita, Ind. T.; John N. Simpson, Dallas, Tex.; L. J. Wortham, Dallas, Tex.

Texas Grain Dealers' Association.—H. B. Dorsey, Weatherford, Tex.; J. Z. Keel, Gainesville, Tex.

Texas Millers' Association.—Frank Kell, Wichita Falls, Tex.

Dallas Commercial Club.—John V. Hughes, Dallas, Tex.

WISCONSIN.

Wisconsin Cheese Makers' Association.—J. K. Powell, Milwaukee, Wis.; Math. Michels, Garnet, Wis.

Wisconsin State Millers' Association.—E. J. Lachmann, Neenah, Wis.

Milwaukee Chamber of Commerce.—George A. Schroeder, Milwaukee, Wis.; Wallace M. Bell, Milwaukee, Wis.

Milwaukee Merchants and Manufacturers' Association.—Walter Read, Milwaukee, Wis.; James S. Church, Milwaukee, Wis.; E. P. Bacon, Milwaukee, Wis.

Muscoda Dairy Board of Trade.—H. E. Austin, Boscobel, Wis.; A. C. V. Elston, Muscoda, Wis.

Superior Retail Grocers' Protective Association.—A. L. Schlappi, Superior, Wis.; A. Y. Rock, Superior, Wis.; Fred York, Superior, Wis.

WYOMING.

Saratoga Board of Trade.—C. P. Clemmons, Saratoga, Wyo.

That constitutes the petition adopted by that convention.

You will observe that the convention is not seeking the rate-making power, as it has been termed before this committee, but simply a rate-revising power in special cases that are brought up for the consideration of the Commission, and that the extent of its desire is simply that rates that have been found in exceptional cases to be unjust, either in being discriminative or in being excessive, may be righted, and righted promptly, and the action of the Commission to be put into immediate effect, subject to review by the courts, of course, but pending such review to be in force.

I want to say further, in connection with the general desire for this legislation, that the attitude of the press throughout the country in its favor has been something remarkable. For the purpose of acquainting myself with the attitude of the press, I have taken pains to be furnished with clippings by a clipping bureau, which I have gone over to a greater or less extent, and in doing so I have been utterly surprised to find the rare exceptions in which the legislation is opposed by the press.

I am sure it is safe to say that not more than 1 out of 25 of the articles from the press, extending over the entire country, expresses itself in opposition to the legislation, and probably not more than 1 in 50. I have not taken the pains to count them up, but from a casual reading of them from day to day I feel safe in saying that not more than 1 in 25 has offered any opposition to the legislation, and that the expression on the part of the press has been more extensive and more general than on any subject that has been before the public of this country, I will say, since the silver agitation. In that agitation, as you will remember, the sentiment of the press was nearly equally divided, or, to say the least, it was perhaps 2 to 1—that is, there was opposed to the silver proposition a proportion of 2 to 1 of the press of the country. In relation to this agitation, however, those in favor of it are, as I said before, at least 25 to 1. I have been the more surprised in relation to this since the passage by the House of the Esch-Townsend bill, by the large majority by which it was carried, and the subsequent strenuous efforts made by the representatives of the railway people to influence the public press in relation to it. I say I have been surprised to find that the effect of that influence is almost inappreciable. I see practically no difference in the sentiment of the press, as shown by these clippings, since the passage of that bill, under the efforts, the remarkable efforts, which have been made by the railway interests of the country to change the sentiment of the press in relation to it. The difference is actually inappreciable.

Senator FORAKER. The newspapers generally favor the passage of that bill?

Mr. BACON. They favored the passage of the bill previously, and they have been favoring the completion of the legislation by the Senate.

Senator FORAKER. They are demanding that we pass that kind of a bill?

Mr. BACON. That is it.

Senator FORAKER. Do you favor that bill yourself?

Mr. BACON. I consider the bill highly effective.

Senator FORAKER. I understood that you also regarded it as highly defective. You had a number of amendments that you wanted made to it, did you not?

Mr. BACON. I suggested two or three amendments which I thought would be an improvement to it.

Senator FORAKER. Were there not two or three times three?

Mr. BACON. There may have been five or six that I suggested.

Senator FORAKER. My recollection is that there were eight or nine. I am not certain about that.

Senator KEAN. Eleven.

Senator FORAKER. There were eleven amendments, Senator Kean says, that you thought ought to be made to the bill.

Mr. BACON. I do not recollect any such number as that; but at the request of two or three of the members of the committee I prepared such amendments as I thought would improve the bill, would make it more effective, or would remedy some of the defects which existed in it.

Senator NEWLANDS. You would rather have that bill in its present form than no bill at all?

Mr. BACON. That bill, generally speaking, as it stands, is satisfactory to the commercial interests of the country that I have the honor to represent.

Senator CULLOM. Did I understand you to say a minute ago, Mr. Bacon, that the sentiment in favor of such bill as you outlined is increasing in strength? I thought I heard you say the sentiment is growing in favor of a bill giving the power to revise rates to the Commission.

Mr. BACON. It is increasing. When I was here last winter the number of organizations associated in this matter was 463, and it is now upward of 500. There is a continual accession of numbers in the effort to secure the legislation.

I meant to have said, when I was speaking of the attitude of the press, that the railway interests have been disseminating literature throughout the press of the country in a very systematic and extensive manner. Every newspaper in the country, or at least a great many of the newspapers of the country, I have learned, have received certain matter issued by the railway interests of the country for the purpose of changing their sentiments in relation to this legislation, and they have sent to commercial organizations—all the commercial organizations of the country, those comprised in our organizations and others as well—pamphlets and literature of a very extensive kind and character, urging them to reconsider the action which they have taken; but, so far as I have learned, not a single commercial organization has changed its attitude.

Senator NEWLANDS. You do not object to that form of discussion, do you?

Mr. BACON. Not at all. I am perfectly willing to have all that can be said on both sides brought to the attention of the commercial organizations, and to leave each one to act for itself upon its own judgment.

Senator NEWLANDS. But you think they have not had any appreciable influence in changing public sentiment?

Mr. BACON. I have not been able to discover any influence whatever as having resulted from it.

Senator KEAN. You made a quotation from President Hadley, of Yale, a personal friend of mine, and a classmate also. If you have no objection, I would like to publish the whole of his article.

Mr. BACON. Mr. Higbie made that quotation.

Senator KEAN. You alluded to President Hadley, of Yale, did you not?

Mr. BACON. No. It was Mr. Higbie that alluded to President Hadley I have no objection, Senator, to having that made part of the record.

Senator KEAN. Well, I would like to put the article of President Hadley in the record. I want to have it appear in the record, in order that light may be thrown on what he does say.

(By order of the committee, the above-mentioned article by President Hadley is printed, following the statement of Mr. Higbie in to-day's proceedings.)

Senator FORAKER. If I do not disturb you, I would like to ask another question. You have presented here the petition that the interstate-commerce law convention adopted, in which they set forth that they want to be protected by legislation from the imposition of unreasonable and oppressive charges for transportation, etc. Can you give us some instances of unreasonable and oppressive charges? The reason I ask for that is that generally we have been told here that rates are not unreasonable and excessive.

Mr. BACON. I brought some instances of that kind to the notice of the committee yesterday, when you were not present.

Senator FORAKER. Oh; I was ill yesterday.

Mr. BACON. You will find them in the report of the hearings of yesterday.

Senator FORAKER. I will not ask you to go over it again, then, if it is in the record. I will look it up.

Mr. BACON. I was going to say that we do not claim that rates are generally excessive. They are not. They are generally regarded as reasonable. It is in exceptional cases where they are excessive and unreasonable, and it is in exceptional cases where they are discriminative, but in those cases we want means of relief, and we want prompt relief.

Senator FORAKER. You say that the cases of discrimination are exceptional also, do you?

Mr. BACON. The cases of discrimination are also exceptional—that is, discrimination between localities.

Senator FORAKER. Yes.

Mr. BACON. And between commodities.

I will say on this point of excessive rates that Mr. Hill in his statement a few days ago referred to the rates in New England, I

think it was—perhaps it was the East in general that he referred to—as being much higher than the rates in the western territory, with which he was familiar.

Senator FORAKER. But we have no complaints from that section of the country. They seem to be entirely satisfied.

Mr. BACON. I merely refer to Mr. Hill's statement to that effect, that rates in the East are much higher than the rates in his western territory.

Senator FORAKER. Everybody charges more than he does, apparently.

Mr. BACON. Furthermore, he made a specific reference to a rate charged on locomotives from Philadelphia to a point in the Southwest which he regarded as excessive. In fact, he stated that they were double what they should be. I refer to that to show that the railway people themselves recognize the fact that there are instances where rates are excessive and discriminatory.

Senator FORAKER. I suppose those locomotives belong to some railroad. They ought to be able to take care of themselves.

Mr. BACON. They ought to be able to take care of themselves, and I simply quoted that as showing the sentiment of the railway people themselves as to the existence of occasional instances of excessive or discriminative rates.

There is one point upon which I would like to say a few words in consequence of an intimation that has been thrown out in a great deal of literature that has been disseminated by the railway interests to the effect that any regulation of railway rates will necessarily lead to the establishment of the mileage basis. There is nothing that will be more deprecated by the commercial organizations of this country than the establishment of a mileage basis; and if in their judgment the proper regulation of railway rates were going to result in that I believe they would withdraw their advocacy of this legislation as a whole. But it is not so regarded by them, and for myself, from having been a close observer for a great many years of the workings of railway rates and the results of certain processes in the establishment of rates, I must say that I utterly fail to observe any possibility of a result of that kind from this proposed regulation of railway rates.

If the proposition were to have the Government fix all the rates of the country, as it has been sought to be made to appear by the opponents of this legislation, I should say that the inevitable result of that would be the reaching of a mileage basis, as was shown this morning by our friend from England in relation to the rates in that country. If the Government undertakes to establish the rates primarily, it must reach to a large extent a mileage basis of establishing those rates, and, in my judgment, nothing would be more detrimental to the commercial interests of this country than the establishment of such a basis; but under this modified form of control of railway rates which is proposed by the commercial organizations, and which is outlined in the Esch-Townsend bill, there is no possibility of such result ensuing.

Senator FORAKER. Just go back to that case that you gave us a while ago of a rate of 25½ cents from the Missouri River to the Atlantic seaboard on flour and only 13 cents on wheat. How would you *have the* Commission proceed to correct that?

Mr. BACON. I did not refer to the difference between wheat and flour. I referred to the difference between the domestic rate and the export rate.

Senator FORAKER. I understand; but it was so much on the one and so much on the other.

Mr. BACON. If the case were before the Commission, it would devolve upon the Commission to cite the parties interested in the establishment of that rate to appear before them and show the reason for it, and show why that difference should exist. If they could convince the Commission that there was good reason for it, and that nobody was injured by it, the Commission would probably so declare. If, on the other hand, the Commission should be convinced that it was detrimental to the country as a whole, not to one particular class or to one particular section of the country, but to the country at large, it should have the power not only to say that it finds it so, but to say to what extent the difference in the rates is too great.

Senator FORAKER. Suppose you change either one of those rates; you have necessarily to change a great many other rates in that same connection, do you not?

Mr. BACON. I should not think it would necessarily follow. It might affect some rates, but it would be within the judgment of the Commission to determine to what extent its order in relation thereto would affect other rates. You would naturally suppose that to reduce a rate from 25½ cents to 13 cents from points on the Missouri River would affect all the rates in the country, and it would probably be so represented by those who are opposed to governmental regulation of railway rates; but the change has been made, and the country has not been destroyed in consequence of it, and I do not think there is any danger that it will be. I think that will be the case in a great many of these hypothetical instances that have been referred to where the commercial interests of the country would be subject to destruction by a change that the Interstate Commerce Commission might find it necessary to order.

I wish to refer to another statement which Mr. Hill made which, it seems to me, is hardly correct. His statement was that the effect of governmental regulation would be to prevent reductions by the carriers themselves. I can not possibly see how that result could be produced unless a standard should be fixed, as has been done in England, as was stated to you this morning, that necessitated the railways keeping the rates up on certain products, because if they put them down they never would be able to get them back again. But that is only under the operation of a maximum rate law or a maximum rate regulation, which it is not the intention or the thought or the desire of the commercial interests of the country to have established in this country.

Senator FORAKER. You do not want a maximum rate?

Mr. BACON. We do not want any general schedule of rates to be applied to any section or any railroad in this country. We want the railroads to be free to make their rates as they always have been and free to change them whenever circumstances require it; but we want to have some place where we can go when we consider that we are injured by any change that is made in rates, to have the question determined by a disinterested body, and to have its determination made effective.

The nearest correspondence to the English law that I know of in this country is in the State of Illinois and in the State of Iowa. In both of those States the commission is empowered to fix what have been termed "schedules of maximum reasonable rates." In the State of Iowa that maximum reasonable schedule has been fixed lower even than in the State of Illinois, and to a very great extent those rates, from the fact of their having been fixed so low, have become the established rates of the State. In the State of Illinois, however, where the same rule applies, and where a larger latitude has been permitted by the commission—that is, the maximum rates fixed by the commission have been fixed on a higher schedule than those fixed in Iowa—the actual result is that hardly any rate in the State of Illinois is up to the legal maximum. The rates in that State range all the way from 10 to 25 per cent below the maximum rates fixed by the commission of that State. That fact goes to show that Mr. Hill's assumption that any governmental regulation of railway rates would prevent a reduction of rates in any case, or in all cases, or in many cases by the railways themselves is incorrect.

Senator DOLLIVER. I have been told, Mr. Bacon, that the warehouse commissioners in Illinois make no effort at all to enforce the distance tariff law of Illinois.

Mr. BACON. They have not had occasion to do so, Mr. Senator.

Senator DOLLIVER. And that there exists really the old method of commodity rates adjusted to the needs of each community and that they are going on practically ignoring the provisions of the law.

Mr. BACON. That is a method which must always continue. Railways must be free to make commodity rates as well as class rates. That they should not be restricted in. But there should be a tribunal that can determine if that power is exercised unjustly or wrongly in any particular case, and that is all we seek.

Senator KEAN. Have you the date when the Illinois rates were fixed?

Mr. BACON. It is many years ago; I do not know the date.

Senator KEAN. It was some twenty or twenty-five years ago, was it not?

Mr. BACON. I should think as much as twenty years ago.

Senator CULLOM. It is longer ago than that. There has been some modification occasionally, but the main schedule of rates was fixed before that.

Mr. BACON. There has been an effort made during the past two years in the State of Illinois to secure a revision of those maximum rates, and the project has been on foot during these past two years to require a horizontal reduction of 25 per cent on those maximum rates; and the Commission reached the conclusion, I think nearly two years ago, now, that it would make that horizontal reduction; but it never has carried that into effect, and in my judgment a horizontal reduction of that kind would be a very unwise thing to attempt. If readjustment of the maximum rates is to be made, it should be made not on any arbitrary basis, but on a due consideration of all the commodities moved within the State and the competition existing in relation to the movement of those commodities.

Senator KEAN. The Iowa tariff is a distance tariff?

Mr. BACON. Yes, sir.

Senator FORAKER. I want to ask whether we understand you as approving or disapproving of the fixing of a maximum rate.

Mr. BACON. As to fixing a system of maximum rates I do not approve it. I do not think it wise. I do not think it just to the railway interests that it should be done. My idea is that in special cases, where the rates are believed to be either discriminative or excessive, the Commission shall determine the question as to whether that particular rate is to be changed.

The CHAIRMAN. Proceed, Mr. Bacon.

Mr. BACON. I wish to refer briefly to one other point mentioned by Mr. Hill in his testimony. When he was asked why the Commission had not enforced the existing interstate-commerce act more effectively than it had done, he made the reply that the Commission was too busy trying to get increased power, to get power to control the rates of the country. I have taken some pains to inquire as to what basis of fact there is to that statement, and I have ascertained that five years ago, or a little more—in the winter of 1899, it was—a bill was prepared partly under the advice of the Commission, as I understand. It was introduced in the Senate by Senator Cullom and was known as the "Cullom bill," the passage of which was advocated by the millers of the country, more particularly. The bill was prepared, as I understand, under the direction of the millers of the country, but it went very extensively into the amendment of the interstate-commerce act, and it was adversely reported by the Senate committee, and consequently was not enacted. In connection with the effort to secure the passage of that bill, the Secretary of the Interstate Commerce Commission, at the direction of the Commission, forwarded to several commercial organizations of the country and also to some shippers who had made complaints before the Commission copies of that bill, saying to them that if they approved it the Commission would be pleased to have them advise their Representatives in Congress to that effect; and I learned that that was the single effort made by the Interstate Commerce Commission to secure this legislation. That covered, perhaps, a period of a month. Since that time I learn that no effort on its part whatever has been made to promote this legislation. That was the result of a conviction of the Commission that the law as it then stood was ineffective and was of little service, and that in order to be of service, to be of actual benefit to the country, it was requisite that the law should be amended by conferring this very power upon it which the commercial organizations have sought to obtain during the past five years.

I think the Commission may be justified in making that attempt at that time on the ground that one of the provisions of the interstate-commerce act is that the Commission shall report to Congress every year any amendment to the law which its experience under its operation leads it to deem to be desirable; and in pursuance of the duty enjoined upon it by the law it has, from year to year, in its annual reports to Congress, recommended the amendment of the law to this very effect. But so far as any act on the part of the Commission beyond that is concerned since that time, I learn that there has been none whatever; that the Commission has taken no part in the effort to promote this legislation. I will say that so far as the committee is concerned that represents the commercial organi-

zations, it has not been in consultation or in conference in any way or manner with the Interstate Commerce Commission.

Senator FORAKER. You are not complaining of the Commission on account of their having desisted from further efforts to secure the passage of a law that suited them?

Mr. BACON. No, I am not complaining of them at all; but I am simply stating that the Commission has not kept itself busy during the past five years in an effort to secure this legislation, as was conveyed in the statement made by Mr. Hill before the committee a few days ago. I thought it best to ascertain the facts in the case, and did so, and wish to present them to the committee, to avoid any misapprehension.

This movement originated with the commercial organizations of the country, and it has been carried on by the commercial organizations of the country. It originated primarily with the National Millers' Association, who sought the amendment of the act in the protection of their individual interests, and then various other commercial interests have joined in the effort and they really have taken it out of the hands of the organization that originally sought it, although the milling organization is one of the associated organizations represented by this committee.

After an informal discussion it was agreed that the conclusion of Mr. Bacon's remarks should be postponed until to-morrow morning, in order that Mr. Cæsar Cone might make a statement to the committee before his departure from the city this afternoon.

STATEMENT OF MR. CÆSAR CONE.

The CHAIRMAN. State your name, residence, and occupation.

Mr. CONE. My name is Cæsar Cone. I am a resident of Greensboro, N. C. I am both a cotton manufacturer and a cotton commission merchant. I am, in connection with my brother, the owner of a controlling interest in four cotton mills, and we are stockholders in three others.

The CHAIRMAN. You make shipments of this manufactured product?

Mr. CONE. Yes, sir.

The CHAIRMAN. How large is your aggregate shipment?

Mr. CONE. If you will pardon me, I will go a little further. Besides being owners of the mills I have mentioned, we are the controlling owners of a commission house known as the Cone Export and Commission Company. We handle, as exclusive sales agents, the output of these 7 mills I have mentioned and about 20 other mills. The aggregate output of those mills, in pounds, is approximately something like 50,000,000 pounds of product per annum. That is, 50,000,000 pounds of finished cloth. We ship that cloth all over the United States, and possibly about 10 per cent of the output of our mills goes abroad. Some of it goes out by way of Seattle and San Francisco, but the most of our export shipping is by way of New York, though we personally have nothing to do with the railroad rates or the export rates, because our export business is done entirely with exporters. We have no direct dealings with the foreign consumers, but it is all done through shippers or the agents of those foreign houses who have their purchasers in New York.

The bulk of our business, about 90 per cent of it, is with various points in the United States. We sell goods from Maine to California and from the Lakes to Mexico. There is not a city or a town in the United States where there is a jobber of dry goods, or where there is a manufacturer of shirts, overalls, or mattresses, and a variety of other goods made out of cotton, that we do not reach directly through either local representatives in cities like Chicago, St. Louis, Cincinnati, and San Francisco, or through traveling agents in the smaller towns.

The rates that we are getting now from the railroads have enabled us to reach that trade. We have had no trouble to sell goods everywhere. Now and then some little discrepancies arise on account of a rate being unfavorable or made up wrong. In such cases we have always appealed directly to the traffic manager of our road. Some of our mills are located on the Seaboard Air Line and some on the Southern, most of them on the Southern road. The mills that we represent are located in three States—Virginia, North and South Carolina. When there are any discrepancies our railroad people are usually fairly prompt in remedying those errors or discrepancies. That is one of the reasons why we feel that it would be to our interest not to have too much legislation.

If I am not trespassing too much on the time of you gentlemen, I will cite a little circumstance to show about what I mean. I am interested in the erection of a mill that has just been completed, and some time since I was figuring on the question of a smokestack. I wanted to have that stack built out of brick that is burned in New Jersey, and that is several hundred miles away. It is a long way to ship freight from New Jersey to North Carolina. A quotation was made me by the stack builder, whose office is in New York, and I remarked to him, "That price is prohibitive; I can not pay that price for that stack." He said, "That is the best I can do; but if you will tell me what you can afford to pay for that stack, in competition with home-burned brick, I will see what I can do with the railroad people." He wanted to know how soon it would be necessary for him to give me a reply, and I said, "I want to know within ten days." He said, "All right; I will take it up with the railroad people." His quotation included the delivery of the brick and the erection of the stack at my plant. It would require something like about 50 carloads of brick to build that stack. Within a week he had his price revised, and gave me a satisfactory quotation and took my contract for the stack. Of course he had to get a special rate from the railroad people, because there is no regular tariff on brick from New Jersey to North Carolina. If you were to have a question of that kind go before a Government tribunal and have Government officials pass on it, I do not believe that that stack builder could have gotten that quotation from the railroad company in ten months, to say nothing of ten days.

Senator DOLLIVER. But there is nothing in any proposed legislation that would interfere with that at all, except upon somebody's making complaint about it?

Mr. CONE. My understanding of this bill is that the question of rates would be largely a question to be passed on by the Interstate Commerce Commission.

Senator DOLLIVER. Not at all. So far as you have gone, the proposed bill would make no change, and the question would never be heard of by this Commission except upon somebody's complaint, after the whole thing was over.

Mr. CONE. My understanding of what is proposed in this bill is that the question of rate making would be one that would be fixed by the Government tribunal.

Senator DOLLIVER. No. You are in error in regard to that.

Mr. CONE. I may be under a misapprehension.

Senator FORAKER. It would be, in case of a complaint.

Mr. CONE. Yes.

Senator KEAN. If a man in North Carolina did not get the contract he might complain.

Mr. CONE. I imagine so. The North Carolina man who burns brick within 40 miles of me might make a complaint. I was not thinking of that, but about the various questions that would come up when my stack builder would go to get a rate, to see what he would be confronted with. That was the point. Probably I did not make it clear.

It is a very much more important question with us to have prompt deliveries—to be able to deliver our goods promptly—than it is about the question of rates. We are shipping a great many goods from some of our mills into New England points—right to the doors of the New England manufacturers. So that it is not a question of what the rate shall be, or how much it shall be from one point to the other.

I may state that under this new ruling, or the way that they propose to fix the law, the New England manufacturer would complain and say, "Here! These fellows down South are ruining us and getting our business. Why, you have got to raise their rates. You are not charging them enough. You have got to raise their rates." We have a rate now that enables us to ship goods, as I say, to New England points. We ship goods to Boston, and Portland, Me. If we were prevented from that, it would be a hardship, because we have not consumers enough in the South to take our products. Since I became interested in cotton manufacturing—and I consider myself a fairly young man yet—I have seen the business grow from a production of four or five thousand bales to over 2,000,000 bales of cotton right with our own spindles, and I do not want to see anything, gentlemen, to make it stop. It would appear to me that if the present situation is interfered with in the least we might be placed in an unpleasant and an embarrassing position regarding that. The railroad people have always appeared to be reasonably fair. Of course we hear some cause of complaint in our neighborhood—little discrepancies that do not amount to anything—but, on the whole, the railroad companies appear to us to be trying to build up our section of the country, and they are giving us rates that we can exist under and treating us fairly well.

I think that is all I have to say.

The CHAIRMAN. You stated that your exports are made principally from New York?

Mr. CONE. Principally from New York, though some of our exports go to the western coast.

The CHAIRMAN. To the western coast?

Mr. CONE. Yes.

The CHAIRMAN. What is your nearest port?

Mr. CONE. You mean the nearest seaport?

The CHAIRMAN. Yes; what is the nearest port to your mill?

Mr. CONE. Either Charleston or Savannah.

The CHAIRMAN. Why do you not ship from Charleston, Savannah, Norfolk, or Baltimore?

Mr. CONE. There are no regular lines at those ports. We send goods to New York that go to South American ports. For instance, some of them go to Para, some of them go up the Amazon River, and some of them go to Cuba—comparatively few to Cuba—but to Haiti, Santo Domingo, and some to Shanghai. We ship quite a good many goods that go to Cuba. The reason why those goods go principally to New York and Seattle and San Francisco is on account of the ocean lines having regular shipping points there.

The CHAIRMAN. You can get vessels there. That is the reason, is it?

Mr. CONE. Principally; yes, sir. You could not get a regular steamer from either of those southern ports. Occasionally a tramp steamer comes in there, of course, but the regular transportation lines do not run to those places.

The CHAIRMAN. As a shipper, then, you are satisfied with the railroad rates. They are not too high?

Mr. CONE. On the whole, yes, sir; we are satisfied.

Senator DOLLIVER. Has there been any complaint in North Carolina of the fact that the cotton rate from Memphis and the surrounding cotton territory is less to Boston than it is to North Carolina points?

Mr. CONE. I have heard some complaint of that kind; yes, sir.

Senator DOLLIVER. We have heard it.

Mr. CONE. Yes, sir; I have heard some complaint of that kind. I have heard that complaint, and I know that the rate from Memphis is lower. We buy a great deal of cotton in Alabama and Mississippi, and now and then in Memphis. The rate from Memphis to our place is, I think, about the same that it is to New England. I do not think it is any more. I am sure it is no less, and I think it is about the same. I have had those rates at home and have gone into that. I have been to our transportation people time and again on questions of that kind, and they have done everything that they possibly could for me.

Senator DOLLIVER. How did they explain that?

Mr. CONE. They usually explained that, I think, by the fact that Memphis is on the Mississippi River, and they have got competing rates to meet. Cotton is shipped frequently from Memphis down to New Orleans for practically almost nothing. The river rate is very cheap, as you gentlemen here are aware, and they have got to make a rate out of Memphis in competition with other rates, either to St. Louis or to New Orleans or some other point, and for that reason they have to make a low rate out of Memphis.

The CHAIRMAN. You are satisfied to have the railroads make the rates?

Mr. CONE. Yes, sir; we would rather deal with the railroads than to deal with a Government tribunal.

Senator NEWLANDS. When you want to arrange a rate, where do you go?

Mr. CONE. We generally take that up with our local traffic agent; that is, the division freight agent, to give his correct title.

Senator NEWLANDS. Located where?

Mr. CONE. Formerly he was located in Raleigh. Recently he has been located in our town, Greensboro, on account of its being a more central location. Formerly he was located in Raleigh, 75 miles east of us.

Senator NEWLANDS. Take the rates that prevail in North Carolina and the region around there. Are they generally adjusted in any one place? Is there a center there where these traffic managers of these different roads are located and where they adjust these rates?

Mr. CONE. No, sir: we are on a local line—the Southern—and they have a local traffic manager there, and so we do not deal with any other road. That is the only road we can deal with.

The committee thereupon went into executive session, after which it adjourned until to-morrow, Wednesday, May 10, 1905.

The committee ordered the following paper inserted at the close of this day's record:

[Senate Document No. 188. Fifty-eighth Congress, third session.]

STOCKHOLDERS IN CERTAIN RAILWAYS ON RECORD JUNE 30, 1904.

The President pro tempore presented the following letter from the Interstate Commerce Commission transmitting, in response to the Senate resolution of January 24, 1905, a statement showing for each railway reporting to the Commission the number of stockholders on record June 30, 1904:

INTERSTATE COMMERCE COMMISSION,
Washington, February 24, 1905.

To the Senate:

The Interstate Commerce Commission has the honor to submit the following statement in response to a resolution of the Senate dated January 24, 1905, which reads as follows:

Resolved, That the Interstate Commerce Commission be directed to transmit to the Senate a statement showing for each railway reporting to the Commission the number of stockholders of record on June thirtieth, nineteen hundred and four.

The records on file in this office do not give the number of stockholders on June 30, the date of the close of the fiscal year for which report is rendered, but the number at the date of the last election of directors prior to June 30, and the statement herewith submitted is compiled from the records now in the possession of the Commission.

From this statement it appears that the number of stockholders reported by the carriers in their annual reports for the year ending June 30, 1904, was 327,851. It can not, however, be said that this figure accurately represents the number of individuals interested in railway securities. The records in this office do not contain a list of the stockholders in each company, and to the extent to which the same individual is an investor in the stock of more than one company the above figure includes duplications.

A considerable amount of railway stock is at present in the hands of trustees. In such cases the number of beneficiaries, as far as ascertained, rather than the number of trustees, is accepted as representing the number of individual investors.

The Commission ventures to state that it has not heretofore made public this class of information. The propriety of its publication at the present time is submitted to the discretion of the Senate.

Very respectfully, MARTIN A. KNAPP, *Chairman.*

Number of railway stockholders.

Name of company.	Number of stockholders at date of last election of directors.
l and Northeastern R. R	6
and Rockfish R. R	3
nd Susquehanna R. R	13
and Western Rwy	15
l Barberton Belt R. R	10
and Vicksburg Rwy	25
Great Southern R. R	12
and San Joaquin R. R	6
d Hudson R. R	202
d Northern Rwy	9
d Susquehanna R. R	546
d Vermont R. R	72
Centerville Rwy	8
R	3
and South Side Rwy	6
and Western Rwy	93
Valley Rwy	340
R. R	109
Terminal R. R	12
College Rwy	34
m, Chuctanunda and North-	9
and Neches River R. R	7
r R. R	390
nd Betsey River Rwy	7
d Mad River R. R	5
nd New Mexico Rwy	10
and Louisiana Rwy	7
Central R. R	10
Midland R. R	11
Southern R. R	11
Southwestern Rwy	10
Western Rwy	10
River R. R	15
Coal and Iron Rwy	8
d Columbia River R. R	8
and Eastern Bridge Co	14
Topeka and Santa Fe Rwy	17,823
elt Line R. R	4
d Birmingham Air Line Rwy	7
nd Charlotte Air Line Rwy	306
nd West Point R. R	267
elt Line Company	2
Knoxville and Northern Rwy	9
nd Birmingham Rwy	57
nd Danville Rwy	83
nd North Carolina R. R	592
nd St. Lawrence R. R	1,661
City R. R	37
Coast Line R. R	883
ugh Branch R. R	6
nd Summerville R. R	5
Belt Rwy	5
Southern R. R	16
Terminal Rwy	6
nesco and Mount Morris R. R	41
Valley R. R. of Maryland	40
le Valley R. R	122
and Annapolis Short Line	36
and Cumberland Valley	8
and Cumberland Valley tension	142
and Cumberland Valley	8
and Harrisburg Rwy	92
and Harrisburg Rwy., Eastension	8
and Harrisburg Rwy., Westension	8
and Ohio R. R	7,132
and Sparrows Point R. R	8
, Chesapeake and Atlantic	127
d Aroostook R. R	13
d Portland Rwy	8
k R. R	9
Barre R. R	21
Barre Branch R. R	6
Bath and Hammondsport R. R	7
Battle Creek and Sturgis Rwy	9
Bay City and Battle Creek Rwy	9
Bayfield Transfer Rwy	5
Beaumont Wharf and Terminal Co	10
Beaver and Ellwood R. R	7
Beaver Dam R. R	8
Beaver Meadow, Tresckow and New Boston R. R	9
Bedford and Bridgeport Rwy	11
Bedford and Hollidaysburg R. R	13
Bedford Belt Rwy	9
Beech Creek R. R	151
Beech Creek Extension R. R	12
Belfast and Moosehead Lake R. R	127
Bellefonte Central R. R	132
Bellingham Bay and British Columbia R. R	16
Belt Rwy. of Chattanooga	4
Belt Rwy. of Chicago	10
Belvidere Delaware R. R	14
Bennettsville and Cheraw R. R	4
Berkshire R. R	231
Bessemer and Lake Erie R. R	10
Big Falls Rwy	5
Big Level and Kinzua R. R	12
Big Stone Gap and Powells Valley Rwy	285
Birmingham and Atlantic R. R	14
Birmingham Southern R. R	7
Blaney and Southern Rwy	4
Bloom Run R. R	3
Bloomsburg and Sullivan R. R	185
Blue Island R. R	6
Blue Ridge Rwy	6
Boise, Nampa and Owyhee Rwy	7
Boston and Albany R. R	8,417
Boston and Lowell R. R	2,168
Boston and Maine R. R	7,402
Boston and New York Air Line R. R	601
Boston and Providence R. R	1,654
Boyne City and Southeastern R. R	7
Bradford and Western Pennsylvania R. R	7
Bradshaw Mountain R. R	10
Bridgton and Saco River R. R	83
Brinkley, Helena and Indian Bay R. R	5
Brownstone and Middletown R. R	9
Bucksport and Elk River R. R	5
Buffalo and Susquehanna R. R	181
Buffalo, Attica and Arcade R. R	10
Buffalo, Bradford and Kane R. R	7
Buffalo Creek R. R	9
Buffalo Erie Basin R. R	14
Buffalo, Rochester and Pittsburgh Rwy	188
Burnside and Cumberland River Rwy	4
Butte, Anaconda and Pacific Rwy	7
Bristol R. R	11
Cadiz R. R	100
Cairo R. R	42
California Northwestern Rwy	8
Calumet Western Rwy	18
Cambria and Clearfield Rwy	17
Camden and Burlington County R. R	185
Cammal and Black Forest Rwy	8
Canada Southern Bridge Co	14
Canastota Northern R. R	11
Cane Belt R. R	9
Canton, Aberdeen and Nashville R. R	13
Cape Fear and Northern Rwy	8
Carolina and Northwestern Rwy	49
Carolina and Western R. R	1
Carolina Northern R. R	39
Carrabelle, Tallahassee and Georgia R. R	27
Carrollton Short Line Rwy	11

Number of railway stockholders—Continued.

Name of company.	Number of stockholders at date of last election of directors.	Name of company.	Num of stc hold at da last e tion direc
Carson and Colorado Rwy	15	Chippewa River and Northern Rwy	
Carthage R. R.	33	Choctaw, Oklahoma and Gulf R. R.	
Carthage and Adirondack Rwy	14	Cincinnati and Muskingum Valley R. R.	
Carthage, Watertown and Sackets Harbor R. R.	34	Cincinnati and Westwood R. R.	
Cascades R. R.	4	Cincinnati, Findlay and Fort Wayne Rwy	
Cassville and Western Rwy	5	Cincinnati, Georgetown and Portsmouth R. R.	
Catasauqua and Fogelsville R. R.	37	Cincinnati, Hamilton and Dayton Rwy	1
Catawissa R. R.	887	Cincinnati, Indianapolis and Western Rwy	
Catskill and Tannersville Rwy	18	Cincinnati, Lebanon and Northern Rwy	
Catskill Mountain Rwy	37	Cincinnati, New Orleans and Texas Pacific Rwy	
Cayuga and Susquehanna R. R.	118	Cincinnati Northern R. R.	
Central Branch Rwy	8	Cincinnati, Richmond and Fort Wayne R. R.	
Central Indiana Rwy	15	Cincinnati, Saginaw and Mackinaw R. R.	
Central New England Rwy	298	Cincinnati Southern Rwy	.....
Central of Georgia Rwy	16	Clarendon and Pittsford R. R.	
Central Pacific Rwy	16	Clearfield and Mahoning Rwy	
Central R. R. of New Jersey	727	Clearfield Southern R. R.	
Central R. R. of Pennsylvania	12	Cleveland and Mahoning Valley Rwy.	
Central R. R. of South Carolina	31	Cleveland and Marietta Rwy	
Central Vermont Rwy	531	Cleveland and Pittsburgh R. R.	5
Charleston and Western Carolina Rwy.	11	Cleveland, Akron and Columbus Rwy.	
Charleston Terminal Co	5	Cleveland, Cincinnati, Chicago and St. Louis Rwy	1
Chartiers Rwy	250	Cleveland, Lorain and Wheeling Rwy.	
Chateaugay and Lake Placid Rwy	2	Cleveland Terminal and Valley R. R.	
Chatham R. R.	131	Coal and Coke Rwy	
Chattahoochee and Gulf R. R.	41	Coal and Iron Rwy	
Chattahoochee Valley Rwy	10	Coal Belt Rwy	
Chattanooga Southern R. R.	12	Colebrookdale R. R.	
Chesapeake and Nashville Rwy	1	Colfax Northern R. R.	
Chesapeake and Ohio Rwy	1,478	Collins and Reidsville R. R.	
Chesapeake and Western R. R.	202	Colorado and Southern Rwy	
Chesapeake Transit Co	44	Colorado and Wyoming Rwy	
Chesapeake Western Rwy	9	Colorado Midland Rwy	
Chester R. R.	107	Colorado Springs and Cripple Creek District Rwy	
Chester and Beckett R. R.	16	Columbia and Palouse R. R.	
Chester and Delaware River R. R.	12	Columbia and Port Deposit Rwy	
Chester Creek R. R.	100	Columbia and Puget Sound R. R.	
Chester, Perryville and Ste. Genevieve Rwy	7	Columbia and Red Mountain Rwy	
Chesterfield and Lancaster R. R.	10	Columbia, Newberry and Laurens R. R.	
Chestnut Hill R. R.	56	Columbia Southern Rwy	
Chicago and Alton Rwy	2,039	Columbus and Xenia R. R.	
Chicago and Eastern Illinois R. R.	399	Colusa and Lake R. R.	
Chicago and Erie R. R.	13	Concord and Montreal R. R.	5
Chicago and Illinois Southern R. R.	5	Concord and Portsmouth R. R.	
Chicago and Lake Superior Rwy	5	Connecticut and Passumpsic Rivers R. R.	
Chicago and Northwestern Rwy	4,109	Connecticut River R. R.	
Chicago and State Line R. R.	10	Connecting Rwy	
Chicago and Western Indiana R. R.	11	Connecting Terminal R. R.	
Chicago, Burlington and Quincy R. R.	442	Conway Seashore R. R.	
Chicago Cincinnati and Louisville R. R.	14	Cooperstown and Charlotte Valley R. R.	
Chicago, Detroit and Canada Grand Trunk Junction R. R.	19	Copper Range R. R.	
Chicago Great Western Rwy	5,949	Cornwall R. R.	
Chicago Heights Terminal Transfer R. R.	6	Cornwall and Lebanon R. R.	
Chicago, Indiana and Eastern Rwy	5	Corvallis and Eastern R. R.	
Chicago, Indianapolis and Louisville Rwy	321	Coudersport and Port Allegany R. R.	
Chicago Junction Rwy	10	Crooked Creek R. R. and Coal Co.	
Chicago, Lake Shore and Eastern Rwy.	7	Crystal River R. R.	
Chicago, Milwaukee and St. Paul Rwy.	5,832	Cumberland and Pennsylvania R. R.	
Chicago, Peoria and St. Louis Rwy. of Illinois	238	Cumberland Valley R. R.	
Chicago, Rock Island and El Paso Rwy.	8	Cumberland Valley and Martinsburg R. R.	
Chicago, Rock Island and Gulf Rwy	11	Cumberland Valley and Waynesboro R. R.	
Chicago, Rock Island and Pacific Rwy.	612	Curwensville and Bower R. R.	
Chicago, St. Louis and New Orleans R. R.	22	Dallas, Cleburne and Southwestern Rwy	
Chicago, St. Paul, Minneapolis and Omaha Rwy	1,045		
Chicago Short Line Rwy	9		
Chicago Terminal Transfer R. R.	988		
Chicago Union Transfer Rwy	25		
Chicago, West Pullman and Southern Rwy	8		

Number of railway stockholders—Continued.

Name of company.	Number of stockholders at date of last election of directors.
and Norwalk R. R	83
e and Mount Morris R. R	10
R. R	47
and Western Rwy	2
lle and Russellville R. R	12
rt, Rock Island and North-	
n Rwy	9
and Michigan R. R	448
and Union R. R	19
and Western R. R	298
Lebanon and Cincinnati R. R.	15
e R. R	587
e and Bound Brook R. R	168
e and Hudson Co	3,819
e, Lackawanna and Western	
	1,575
e, Maryland and Virginia	
	368
e River R. R. and Bridge Co	12
e, Susquehanna and Schuyl-	
R	7
e Valley Rwy	10
and Pacific Suburban Rwy	12
, Bonham and New Orleans	
	11
and Rio Grande R. R	2,910
Enid and Gulf R. R	8
Lakewood and Golden R. R	20
and Eastern R. R	12
nes and Fort Dodge R. R	189
nes, Iowa Falls and Northern	
	7
nes Union Rwy	12
nes Western Rwy	8
and Bay City R R	6
and Charlevoix R. R	7
and Chicago R. R	11
and Mackinac Rwy	183
and Toledo Shore Line R. R	11
Grand Haven and Milwaukee	
	11
Hillsdale and Southwestern	
	368
Monroe and Toledo R. R	15
Southern R. R	13
Toledo and Milwaukee R. R.	8
and Newport R. R	85
and Piscataquis R. R	87
g and Mechanicsburg R. R	189
Southern R. R	5
ond and Southwestern Rwy	8
k R. R	6
e and Sioux City R. R	30
and Iron Range R. R	19
and Northern Minnesota Rwy.	6
Missabe and Northern Rwy	9
South Shore and Atlantic	
	630
Terminal Rwy	6
Watertown and Pacific Rwy	6
:, Allegheny Valley and Pitts-	
t. R	23
and Charlotte R. R	5
s County R. R	12
lin Rwy	6
ad Top R. R. and Coal Co	95
olina Rwy	7
isiana R. R	24
hanoy R. R	57
nsylvania R. R	311
Louis Connecting Rwy	9
nnessee and Western North	
na R. R	48
nton R. R	7
Kentucky Rwy	72
Rwy. of Minnesota	6
Texas R. R	8
and Northern R. R	11

Name of company.	Number of stockholders at date of last election of directors.
El Dorado and Bastrop Rwy	12
El Paso and Southwestern R. R	10
El Paso and Southwestern R. R. of	
Texas	8
El Paso Southern Rwy	25
Elgin, Joliet and Eastern Rwy	12
Elk and Highland R. R	9
Elkton and Guthrie R. R	177
Elkton and Middletown R. R. of Cecil	
County	10
Ellenville and Kingston R. R	15
Ellwood Connecting R. R	7
Elmira and Lake Ontario R. R	15
Elmira and Williamsport R. R	322
Elmira, Cortland and Northern R. R	10
Emporium and Rich Valley R. R	11
Englewood Connecting Rwy	7
Erie R. R	4,309
Erie and Central New York R. R	14
Erie and Pittsburgh R. R	244
Escanaba and Lake Superior R. R	8
Etna and Montrose R. R	7
Eureka and Palisade Rwy	21
European and North America Rwy	408
Evansville and Indianapolis R. R	8
Evansville and Terre Haute R. R	256
Evansville Belt Rwy	9
Fairchild and Northeastern Rwy	9
Fall Brook Rwy	16
Farmville and Powhatan R. R	43
Fitchburg R. R	6,099
Fitzgerald, Ocmulgee and Red Bluff	
Rwy	16
Florida East Coast Rwy	5
Florida West Shore Rwy	10
Fonda, Johnstown and Gloversville	
R. R	136
Fort Smith and Western R. R	11
Fort Wayne and Jackson R. R	455
Fort Worth and Denver City Rwy	412
Fort Worth and Denver Terminal Rwy.	10
Fort Worth and Rio Grande Rwy	14
Frankfort and Cincinnati Rwy	8
Franklin and Abbeville Rwy	6
Franklin and Megantic Rwy	3
Franklin and Tilton R. R	2
Freehold and Jamesburg Agricultural	
R. R	90
Fulton Chain Rwy	13
Fulton County Narrow Gauge Rwy	35
Gainesville and Gulf Rwy	16
Gainesville, Jefferson and Southern	
R. R	335
Galesburg and Great Eastern R. R	8
Galveston, Harrisburg and San An-	
tonio Rwy	16
Galveston, Houston and Henderson	
R. R. of 1882	11
Galveston, Houston and Northern Rwy.	11
Genesee and Wyoming R. R	21
Georges Creek and Cumberland R. R	10
Georges Valley R. R	102
Georgetown and Western R. R	10
Georgia, Florida and Alabama Rwy	19
Georgia Midland Rwy	12
Georgia Northern Rwy	5
Georgia R. R. and Banking Co	1,038
Georgia Southern and Florida Rwy	239
Gettysburg and Harrisburg Rwy	198
Gila Valley, Globe and Northern Rwy.	17
Glasgow Rwy	9
Glenfield and Western R. R	3
Glenn Springs R. R	7
Goshen and Deckertown Rwy	69
Gouverneur and Oswegatchie R. R	14
Grafton and Upton R. R	17
Grand Canyon Rwy	56
Grand Rapids and Indiana Rwy	201

Number of railway stockholders—Continued.

Name of company.	Number of stockholders at date of last election of directors.
Grand River Valley R. R	59
Grand Trunk Junction Rwy	8
Grand Trunk Western Rwy	10
Great Northern Rwy	383
Green Bay and Western R. R	152
Greene R. R	21
Greenwich and Johnsonville Rwy	9
Greigsville and Pearl Creek R. R	9
Gulf and Chicago Rwy	10
Gulf and Ship Island R. R	11
Gulf, Beaumont and Kansas City Rwy	16
Gulf, Colorado and Santa Fe Rwy	14
Gulf, Western Texas and Pacific Rwy	11
Hampton and Branchville R. R	6
Hannibal Union Depot Co	6
Hanover and Newport R. R	13
Hardwick and Woodbury R. R	130
Harlem River and Port Chester R. R	14
Harrisburg, Portsmouth, Mount Joy and Lancaster R. R	287
Hartford and Connecticut Western R. R	651
Hartwell Rwy	6
Hawthorne, Nebagamon and Superior Rwy	4
Hazelhurst and Southeastern Rwy	5
Hearne and Brazos Valley R. R	10
Henderson Bridge Co	9
Herrin Rwy	5
Hocking Valley Rwy	1,503
Holly River and Addison Rwy	7
Holyoke and Westfield R. R	14
Home Avenue R. R	39
Hoosac Tunnel and Wilmington R. R	44
Hooverhurst and Southwestern R. R	7
Houlton Branch R. R	22
Houston and Shreveport R. R	11
Houston and Texas Central R. R	16
Houston East and West Texas Rwy	19
Hunters Run and Slate Belt R. R	8
Huntingdon and Broad Top Mountain R. R. and Coal Co	1,072
Iberia and Vermilion R. R	6
Idaho Northern Rwy	7
Illinois and Indiana R. R	6
Illinois Central R. R	9,123
Illinois Northern Rwy	5
Illinois Southern Rwy	82
Illinois Terminal R. R	5
Ilwaco Rwy. and Navigation Co	5
Independence and Monmouth Rwy	9
Indiana, Illinois and Iowa R. R	24
Indiana Northern Rwy	6
Indiana Stone R. R	10
Indianapolis and Vincennes R. R	14
Indianapolis Belt R. R	251
Indianapolis Union Rwy	3
International and Great Northern R. R	18
International Rwy. of Maine	13
Interstate R. R	6
Iola and Northern R. R	8
Iowa and St. Louis Rwy	8
Iowa Central Rwy	717
Iowa Central and Western Rwy	34
Ironton R. R	9
Ivorydale and Mill Creek Valley Rwy	6
Jackson, Lansing and Saginaw R. R	54
Jacksonville and St. Louis Rwy	5
Jacksonville and Southwestern R. R	4
Jacksonville Terminal Co	6
Jamestown and Franklin R. R	43
Jamestown, Chautauqua and Lake Erie Rwy	76
Johnsonburg R. R	15
Johnstown and Stony Creek R. R	7
Joliet and Chicago R. R	181
Joliet and Northern Indiana R. R	15
Junction R. R. (of Philadelphia)	12
Kalamazoo and South Haven R. R	196
Kalamazoo and White Pigeon R. R	8
Kalamazoo, Allegan and Grand Rapids R. R	105
Kanawha and Michigan Rwy	217
Kane and Elk R. R	6
Kankakee and Seneca Rwy	7
Kanona and Prattsburgh Rwy	9
Kanopolis and Kansas Central Rwy	10
Kansas and Arkansas Valley Rwy	11
Kansas and Colorado Pacific Rwy	154
Kansas City and Southwestern Rwy (of Kansas)	11
Kansas City and Southwestern Rwy of Missouri	6
Kansas City Belt Rwy	10
Kansas City, Clinton and Springfield Rwy	15
Kansas City, Fort Scott and Memphis Rwy	17
Kansas City, Memphis and Birmingham R. R	13
Kansas City, Mexico and Orient Rwy	27
Kansas City, St. Louis and Chicago R. R	44
Kansas City Southern Rwy	15
Kansas Southwestern Rwy	7
Kansas Southwestern Rwy	9
Keeseville, Ausable Chasm and Lake Champlain R. R	82
Kennebec Central R. R	76
Kennebunk and Kennebunkport R. R	38
Kentucky and Indiana Bridge and R. R. Co	9
Kentwood and Eastern R. R	5
Keokuk and Des Moines Rwy	212
Keokuk and Hamilton Bridge Co	47
Ketner and Kay Fork Rwy	10
Kewaunee, Green Bay and Western R. R	26
Kinkora and New Lisbon R. R	7
Kinzua and Tiona R. R	11
Kinzua Hemlock R. R	11
Kinzua Valley R. R	11
Kishacoquillas Valley R. R	76
Klamath Lake R. R	5
Kootenai Valley Rwy	6
Kushequa R. R	11
La Salle and Bureau County R. R	6
Lackawanna and Montrose R. R	149
Lafayette R. R	15
Lake Champlain and Moriah R. R	9
Lake Erie and Western R. R	598
Lake Erie, Alliance and Wheeling R. R	10
Lake Shore and Michigan Southern Rwy	603
Lake Superior and Ishpeming Rwy	10
Lake Superior Terminal and Transfer Rwy	12
Lake Tahoe Rwy. and Transportation Co	8
Lake Terminal R. R	5
Lakeside and Marblehead R. R	11
Lancaster and Chester Rwy	6
Lancaster and Quarryville R. R	11
Lancaster, Oxford and Southern R. R	7
Lawndale Rwy. and Industrial Co	7
Leavenworth and Topeka Rwy	9
Leavenworth, Kansas and Western Rwy	7
Leavenworth Terminal Rwy. and Bridge Co	6
Leetonia Rwy	12
Lehigh and Hudson River Rwy	106
Lehigh and Lackawanna R. R	59
Lehigh and New England R. R	6
Lehigh and New York R. R	191
Lehigh and Pavilion R. R	14
Lehigh and Susquehanna R. R	1

Number of railway stockholders—Continued.

Name of company.	Number of stockholders at date of last election of directors.
lley R. R	5,777
lley R. R. of New Jersey	10
lley Rwy	14
Caney Valley Air Line R. R.	14
and Tyrone R. R	376
nd Auburn Rwy	2
and Eastern Rwy	10
Terminal R. R	8
ver R. R	7
alley R. R	8
R. R	8
and Madison Rwy	65
awha R. R	7
ni R. R	1,064
: and Fort Smith Rwy	27
: and Hot Springs Western	5
: Junction Rwy	10
ylkill Navigation, R. R. and	946
d Lake Conesus R. R	9
: and Toledo Rwy	12
d R. R	574
and Hachita R. R	5
and Arkansas Rwy	16
and Northwest R. R	98
Rwy. and Navigation Co	11
Western R. R	6
and Atlantic R. R	11
and Jeffersonville Bridge Co.	6
and Nashville R. R	1,672
Bridge Co	181
Henderson and St. Louis	12
New Albany and Corydon	14
l Andover R. R	190
R. R	11
lley R. R. and Coal Co	184
irmingham Rwy	7
blin and Savannah R. R	12
llinois and St. Louis Rwy	12
R	11
Coal R. R	149
State Line R. R	18
Valley R. R	12
falls R. R	7
tral R. R	779
ley R. R	11
dn and Long Beach Trans-	8
r and Lawrence R. R	567
r and Oneida Rwy	255
nd Grand Rapids R. R	7
nd Northeastern R. R	7
e Rwy	8
e, Marquette and Northern	5
nd Pikes Peak Rwy	46
Columbus and Cleveland	5
Tomahawk and Western	15
d Rye Valley Rwy	4
and Southeastern Rwy	11
Timpson and Sabine Pass	9
and Pennsylvania R. R	72
l Oceana R. R	5
y and Fort Dodge R. R	8
n and New Salem R. R	7
nd Cleveland R. R	13
tiver R. R	5
rt Connecting R. R	8
R. R	10
Conneaut Lake and Lines- R	26
Air Line R. R	326
Michigan Air Line Rwy	7
Michigan Central R. R	508
Michigan Midland and Canada R. R	20
Middletown and Hummelstown R. R	14
Middletown, Meriden and Waterbury R. R	9
Midland Valley R. R	9
Milford and Woonsocket R. R	33
Milford, Franklin and Providence R. R	20
Mill Creek R. R	4
Mill Creek and Mine Hill Navigation and R. R. Co	107
Millen and Southwestern R. R	3
Millstone and New Brunswick R. R	76
Mine Hill and Schuylkill Haven R R	1,974
Mineral Range R. R	20
Minneapolis and St. Louis R. R	550
Minneapolis Eastern Rwy	10
Minneapolis, St. Paul and Sault Ste. Marie Rwy	313
Minneapolis Union Rwy	6
Minnesota and International Rwy	10
Minnesota and North Wisconsin R. R	8
Minnesota Transfer Rwy	10
Mississippi River and Bonne Terre Rwy	6
Mississippi River, Hamburg and Western Rwy	8
Missouri, Kansas and Texas Rwy	1,509
Missouri Pacific Rwy	1,861
Missouri Southern R. R	7
Mobile and Birmingham R. R	95
Mobile and Ohio R. R	798
Mobile, Jackson and Kansas City R. R.	220
Mohawk and Malone Rwy	14
Monongahela R. R	14
Monongahela and Washington R. R	12
Monongahela Connecting R. R	19
Monson R. R	18
Montana Central Rwy	6
Montgomery and Erie Rwy	116
Montour R. R	6
Montpelier and Wells River R. R	27
Montreal and Atlantic Rwy	9
Montrose Rwy	252
Morenci Southern Rwy	10
Morgan's Louisiana and Texas R. R	7
Morgantown and Kingwood R. R	7
Morris and Essex R. R	2,450
Morris and Essex Extension R. R	34
Moscow, Camden and San Augustine Rwy	10
Moshassuck Valley R. R	5
Mount Airy and Eastern Rwy	1
Mount Carbon and Port Carbon R. R	53
Mount Gilead Short Line Rwy	.....
Mount Holly, Lumberton and Medford R R	62
Mount Hope Mineral R. R	9
Mount Jewett, Kinzua and Riterville R. R	14
Mount Penn Gravity R. R	135
Muncie and Western R. R	14
Munising Rwy	14
Muscatine North and South R. R	20
Muskegon, Grand Rapids and Indiana R. R	8
Narragansett Pier R. R	44
Nashua and Lowell R. R	405
Nashua, Acton and Boston R. R	140
Nashville and Decatur R. R	345
Nashville and Sparks R. R	23
Nashville, Chattanooga and St. Louis Rwy	454
Natchez and Southern Rwy	8
Natchez, Columbia and Mobile R. R	9
National City and Otay Rwy	7

Number of railway stockholders—Continued.

Name of company.	Number of stockholders at date of last election of directors.
National Docks Rwy	12
Naugatuck R. R	461
Nesquehoning Valley R. R	597
Nevada-California-Oregon Rwy	11
Nevada Central R. R	22
Nevada County Narrow Gauge R. R	61
New Boston R. R	20
New Castle and Beaver Valley R. R	10
New England R. R	52
New Haven and Derby R. R	23
New Haven and Dunbar R. R	5
New Haven and Northampton Co	1
New Jersey and New York R. R	11
New Jersey Junction R. R	15
New Jersey Terminal R. R	10
New London Northern R. R	379
New Mexico and Arizona R. R	6
New Orange Four Junction R. R	7
New Orleans and Northeastern R. R	47
New Orleans and Northwestern R. R	10
New Orleans, Natalbany and Natchez Rwy	7
New Orleans Terminal Co	8
New River, Holston and Western R. R	9
New York and Canada R. R	21
New York and Greenwood Lake Rwy	24
New York and Harlem R. R	809
New York and Long Branch R. R	14
New York and Ottawa R. R	9
New York and Pennsylvania R. R	60
New York and Putnam R. R	14
New York and Rockaway Beach Rwy	52
New York Bay R. R	8
New York, Brooklyn and Manhattan Beach Rwy	155
New York Central and Hudson River R. R	11,782
New York Central Niagara River R. R	14
New York, Chicago and St. Louis R. R	618
New York, Lackawanna and Western Rwy	1,070
New York, New Haven and Hartford R. R	10,842
New York, Ontario and Western Rwy	2,437
New York, Philadelphia and Norfolk R. R	37
New York, Susquehanna and Western R. R	100
New York, Texas and Mexican Rwy	13
Newark and Bloomfield R. R	25
Newburgh and South Shore Rwy	8
Newburgh, Dutchess and Connecticut R. R	152
Newburyport R. R	289
Newport and Richford R. R	6
Newport and Wickford R. R	31
Newton and Northwestern R. R	62
Niagara Falls Branch R. R	14
Niagara Junction Rwy	2
Nittany Valley R. R	15
Norfolk and Portsmouth Belt Line R. R	8
Norfolk and Southern R. R	39
Norfolk and Western Rwy	2,911
Norristown and Maine Line Connecting R. R	10
Norristown Junction R. R	12
North Brookfield R. R	41
North Carolina R. R	410
North Pennsylvania R. R	1,100
North Shore R. R	38
Northampton and Hertford R. R	4
Northeast Pennsylvania R. R	280
Northern R. R	2,068
Northern Alabama Rwy	16
Northern Central Rwy	1,199
Northern Central Michigan R. R	12
Northern Liberties Rwy	11
Northern Ohio Rwy	13
Northern Pacific Rwy	368
Northern Pacific Terminal Co. of Oregon	12
Northern R. R. of New Jersey	9
Northwestern Coal Rwy	6
Northwestern R. R. of South Carolina	5
Norway Branch R. R	59
Norwich and Worcester R. R	958
Norwood and St. Lawrence R. R	16
Newport and Cincinnati Bridge Co	8
Oberlin and La Grange Rwy	6
Ogden Mine R. R	93
Ohio and Little Kanawha R. R	170
Ohio Connecting Rwy	10
Old Colony R. R	5,371
Omaha Bridge and Terminal Rwy	7
Ontario, Carbondale and Scranton Rwy	17
Orange and Northwestern R. R	7
Orange County R. R	24
Oregon and California R. R	23
Oregon R. R. and Navigation Co	26
Oregon Short Line R. R	19
Oshkosh Transportation Co	3
Oswego and Rome R. R	45
Oswego and Syracuse R. R	377
Pacific and Idaho Northern Rwy	15
Pacific Coast Co	958
Pacific Coast Rwy	10
Pacific Rwy. in Nebraska	8
Paducah Union Depot Co	9
Paragould and Memphis Rwy	9
Paragould Southeastern Rwy	9
Pascagoula Street Rwy. and Power Co	17
Passaic and Delaware R. R	19
Passaic and Delaware Extension R. R	10
Paterson and Hudson River R. R	101
Paterson and Ramapo R. R	77
Pawnee R. R	6
Pecksport Connecting Rwy	16
Pecos and Northern Texas Rwy	9
Pecos River R. R	13
Pecos Valley and Northeastern Rwy	18
Pemberton and Hightstown R. R	10
Pemigewasset Valley R. R	194
Pennsylvania Co	21
Pennsylvania R. R	44,175
Pennsylvania and New York Canal and R. R. Co	20
Peoria and Bureau Valley R. R	228
Peoria and Eastern Rwy	351
Peoria and Pekin Terminal Rwy	50
Peoria and Pekin Union Rwy	19
Peoria, Decatur and Mattoon R. R	6
Pere Marquette R. R	1,984
Perkiomen R. R	16
Perth Amboy and Woodbridge R. R	11
Peru and Detroit Rwy	17
Peterborough R. R	325
Philadelphia and Baltimore Central R. R	11
Philadelphia and Beach Haven R. R	8
Philadelphia and Chester Valley R. R	34
Philadelphia and Delaware County R. R	114
Philadelphia and Erie R. R	268
Philadelphia and Frankford R. R	8
Philadelphia and Long Branch R. R	13
Philadelphia and Reading Rwy	11
Philadelphia and Reading Terminal R. R	12
Philadelphia and Trenton R. R	233
Philadelphia, Baltimore and Washington R. R	31
Philadelphia Belt Line R. R	17
Philadelphia, Germantown and Norristown R. R	1,035

Number of railway stockholders—Continued.

me of company.	Number of stockholders at date of last election of directors.
, Harrisburg and Pitts-	
.....	14
,Newtown and New York	
.....	157
Rangeley R. R	34
Eastern R. R.....	7
.....	6
lley R. R	186
d Cumberland Rwy	12
d Western R. R	6
'kansas River Rwy	5
wy.....	19
ıd Allegheny River R. R .	10
ıd Eastern R. R	10
ıd Lake Erie R. R	89
ıd Moon Run R. R.....	7
ıd Ohio Valley Rwy.....	11
\llegheny and McKees	
.....	7
:hartiers and Youghio-	
.....	13
'incinnati, Chicago and	
wy.....	650
'ort Wayne and Chicago	
.....	2,642
isbon and Western R. R..	20
icKeesport and Youghio-	
.....	295
)hio Valley and Cincin-	
.....	18
3hawmut and Northern	
.....	89
'irginia and Charleston	
.....	27
Vheeling and Kentucky	
.....	74
Youngstown and Ash-	
.....	261
l North Adams R. R	113
R	9
d Middleboro R. R	24
Newark R. R	11
ɔrd and Northern R. R ...	12
Duluth and Western Rwy.	
ɔta).....	8
ɔuthern R. R	6
Monticello and Summit-	
.....	16
: R. R.....	16
ıd Southern R. R.....	8
l Ogdensburg Rwy.....	228
l Rumford Falls Rwy.....	64
ınd Tygart Valley R. R...	6
t.....	11
edericksburg and Pied-	
.....	146
ley R. R	8
e and Eastern Rwy.....	9
Eastern R. R	8
Northwestern R. R.....	5
nd Springfield R. R	36
nd Worcester R. R	909
Warren and Bristol R. R..	70
Webster and Springfield	
.....	7
ıtate Line R. R	8
ollton and St. Louis Rwy .	1
ha and Kansas City R. R .	10
Cape Fear Rwy.....	7
Western Rwy.....	3
te Rwy	13
r R. R	14
, Spencer and Glenville	
.....	23
Columbia R. R.....	281
: R. R.....	13
rietta and Hanover R. R .	10
exas and Southern Rwy..	9

Name of company.	Number of stockholders at date of last election of directors.
Red River Valley R. R.....	6
Rensselaer and Saratoga R. R	837
Republic and Kettle River Rwy.....	6
Reynoldsville and Falls Creek R. R ...	14
Rhode Island and Massachusetts R. R., in Massachusetts.....	2
Rhode Island and Massachusetts R. R. of Rhode Island.....	4
Richmond and Mecklenburg R. R.....	186
Richmond, Fredericksburg and Potomac R. R.....	111
Richmond, Fredericksburg and Potomac and Richmond and Petersburg R. R. Connection Co.....	54
Ridgway and Clearfield R. R	12
Rio Grande R. R.....	8
Rio Grande R. R. (of Texas).....	35
Rio Grande and Santa Fe R. R	10
Rio Grande Gunnison Rwy	5
Rio Grande Junction Rwy.....	26
Rio Grande Southern R. R.....	50
Roaring Creek and Belington R. R	6
Rochester and Genesee Valley R. R ...	51
Rockdale R. R.....	15
Rockport, Langdon and Northern Rwy.	113
Rockville R. R.....	6
Rocky Hill R. R. and Transportation Co.....	42
Rogers R. R.....	9
Rome and Clinton R. R.....	138
Rome, Watertown and Ogdensburg R. R.....	1,094
Rooks County R. R	9
Rosslyn Connecting R. R	7
Roswell R. R.....	7
Rumford Falls and Rangeley Lakes R. R.....	26
Rupert and Bloomsburg R. R.....	11
Rutland R. R	1,058
Rutland and Whitehall R. R	90
St. Anthony R. R	9
St. Clair, Madison and St. Louis Belt R. R.....	6
St. Clair Terminal R. R.....	8
St. Clair Tunnel Co	9
St. Johns River Terminal Co.....	7
St. Johnsbury and Lake Champlain R. R.....	437
St. Joseph and Grand Island Rwy	9
St. Joseph, South Bend and Southern R. R.....	54
St. Joseph Terminal R. R.....	10
St. Joseph Union Depot Co	15
St. Lawrence and Adirondack Rwy ...	12
St. Louis and Cairo R. R.....	12
St. Louis and Hannibal Rwy	14
St. Louis and North Arkansas R. R....	90
St. Louis and San Francisco R. R.....	1,521
St. Louis, Belleville and Southern Rwy.	6
St. Louis Bridge Co.....	384
St. Louis, El Reno and Western Rwy..	10
St. Louis, Iron Mountain and Southern Rwy	33
St. Louis, Kansas City and Colorado R. R.....	18
St. Louis, Memphis and Southeastern R. R.....	10
St. Louis Merchants' Bridge Co.....	10
St. Louis Merchants' Bridge Terminal Rwy	103
St. Louis, Oak Hill and Carondelet Rwy	6
St. Louis Southwestern Rwy	753
St. Louis Southwestern Rwy. of Texas.	11
St. Louis Transfer Rwy	6
St. Louis, Troy and Eastern R. R.....	8
St. Louis, Vandalia and Terre Haute R. R.....	160

Number of railway stockholders—Continued.

Name of company.	Number of stockholders at date of last election of directors.
St. Louis, Watkins and Gulf Rwy	7
St. Paul Eastern Grand Trunk Rwy	19
St. Paul, Minneapolis and Monitoba Rwy	63
St. Paul Union Depot Co	9
Salem, Falls City and Western Rwy	3
Salmon River R. R	6
San Antonio and Aransas Pass Rwy	97
San Antonio and Gulf R. R	10
San Diego, Cuyamaca and Eastern Rwy	18
San Diego, Pacific Beach and La Jolla Rwy	5
San Francisco and North Pacific Rwy	19
San Francisco and Northwestern Rwy	5
San Pedro, Los Angeles and Salt Lake R. R	12
San Pete Valley Rwy	6
Sandy River R. R	3
Santa Fe, Prescott and Phœnix Rwy	12
Saratoga and Schenectady R. R	122
Sault Ste. Marie Bridge Co	13
Schuylkill and Lehigh R. R	13
Schuylkill and Lehigh Valley R. R	16
Schuylkill Valley Navigation and R. R. Co	77
Scottdale Connecting R. R	6
Sebasticook and Moosehead R. R	7
Seaboard Air Line Rwy	29
Shamokin, Sunbury and Lewisburg R. R	12
Shamokin Valley and Pottsville R. R	55
Sharon Rwy	154
Sharon and Ceres R. R	10
Sharpsville R. R	16
Sheffield and Tionesta Rwy	5
Sierra Rwy. of California	8
Sierra Valleys Rwy	8
Silver Lake Rwy	13
Silverton R. R	26
Silverton, Gladstone and Northerly R. R	75
Silverton Northern R. R	6
Skaneateles R. R	10
Slackwater Connecting R. R	7
Slate Run R. R	9
Smethport R. R	11
Snake River Valley R. R	5
Somerset Rwy	50
South and North Alabama R. R	223
South and Western Rwy	13
South Buffalo Rwy	10
South Carolina Pacific Rwy	66
South Chester R. R	10
South Chicago R. R	6
South Chicago and Southern R. R	10
South Georgia Rwy	20
South Manchester R. R	9
South Pacific Coast Rwy	14
Southern Rwy	9,572
Southern Rwy., Carolina Division	15
Southern California Rwy	37
Southern Indiana Rwy	6
Southern Kansas Rwy. of Texas	10
Southern Pacific Co	2,424
Southern Pacific R. R	171
Southern Pennsylvania Rwy. and Mining Co	14
Southwest Pennsylvania Rwy	199
Southwestern R. R. (of Georgia)	957
Spokane Falls and Northern Rwy	25
Spuyten Duyvil and Port Morris R. R	20
Stanley, Merrill and Phillips Rwy	5
State Line and Sullivan R. R	51
Staten Island Rwy	114
Staten Island Rapid Transit Rwy	19
Sterling Mountain Rwy	13
Stewaristown R. R	120
Stillmore Air Line Rwy	5
Stockbridge and Pittsfield R. R	216
Stony Brook R. R	235
Stony Creek R. R	222
Sturgis, Goshen and St. Louis R. R	10
Suffolk and Carolina Rwy	41
Sugar Land Rwy	8
Sullivan County R. R	8
Suncook Valley R. R	210
Sunset R. R	7
Susquehanna and Buffalo R. R	11
Susquehanna and New York R. R	14
Susquehanna, Bloomsburg and Berwick R. R	7
Sussex R. R	46
Suwannee and San Pedro R. R	4
Sylvania Central Rwy	5
Syracuse and Baldwinsville Rwy	24
Syracuse, Binghamton and New York R. R	89
Syracuse, Geneva and Corning Rwy	28
Tabor and Northern Rwy	43
Tallassee and Montgomery Rwy	8
Tallullah Falls Rwy	11
Tamaqua, Hazelton and Northern R. R	13
Tennessee Central R. R	13
Terminal R. R. Association of St. Louis	31
Terminal Rwy. of Buffalo	12
Terre Haute and Indianapolis R. R	222
Terre Haute and Logansport Rwy	8
Terre Haute and Peoria R. R	98
Texas and New Orleans R. R	10
Texas and Pacific Rwy	945
Texas, Arkansas and Louisiana Rwy	18
Texas Central R. R	161
Texas Mexican Rwy	8
Texas Midland R. R	8
Texas, Sabine Valley and Northwestern Rwy	10
Texas Southern Rwy	10
Ticonderoga R. R	34
Tionesta Valley Rwy	15
Tionesta Valley and Hickory Rwy	5
Tipton R. R	11
Tivoli Hollow R. R	10
Toledo and Ohio Central Rwy	15
Toledo, Canada Southern and Detroit Rwy	14
Toledo, Peoria and Western Rwy	74
Toledo Rwy. and Terminal Co	40
Toledo, Saginaw and Muskegon Rwy	9
Toledo, St. Louis and Western R. R	18
Toledo Southeastern Rwy	5
Toledo, Walhonding Valley and Ohio R. R	12
Toluca, Marquette and Northern R. R	10
Tony and Northeastern Rwy	5
Transylvania R. R	10
Traverse City R. R	58
Trenton Delaware Bridge Co	9
Tresckow R. R	1
Trinity and Brazos Valley Rwy	9
Trinity Valley Southern R. R	6
Troy and Bennington R. R	55
Troy and Greenbush R. R	96
Troy Union R. R	15
Tuckerton R. R	140
Tunnel R. R. of St. Louis	144
Tuscarora Valley R. R	5
Tuskegee R. R	7
Ulster and Delaware R. R	21
Ultima Thule, Arkadelphia and Mississippi Rwy	5
Unadilla Valley Rwy	7
Union R. R. of Baltimore	9
Union R. R. (of New York)	15
Union R. R. (of Pennsylvania)	8
Union and Glenn Springs R. R	8

Number of railway stockholders—Continued.

Name of company.	Number of stockholders at date of last election of directors.	Name of company.	Number of stockholders at date of last election of directors.
Union Freight R. R.	3	West Side Belt R. R.	18
Union Pacific R. R.	14,256	West Stockbridge R. R.	5
Union Point and White Plains R. R.	75	West Virginia and Southern R. R.	5
Union Transportation Co	78	West Virginia Central and Pittsburg Rwy	16
United New Jersey R. R. and Canal Co.	3,585	Westerman Coal and Iron R. R	.....
United States and Canada R. R.	13	Western Maryland R. R.	128
United Verde and Pacific Rwy	5	Western New York and Pennsylvania Rwy	129
Upper Coos R. R	54	Western Rwy. of Alabama	2
Ursina and North Fork Rwy	9	Wharton Valley Rwy	14
Utica and Black River R. R	377	Wheeling and Lake Erie R. R.	1,004
Utica, Chenango and Susquehanna Valley Rwy	1,042	Wheeling Terminal Rwy	7
Utica, Clinton and Binghamton R. R	220	White and Black River Valley R. R	10
Valdosta Southern Rwy	5	White River R. R	7
Valley R. R. (of New York)	91	Wichita Falls Rwy	7
Valley R. R. (of Virginia)	80	Wichita Valley Rwy	34
Valley Connecting R. R	7	Wilkes Barre and Eastern R. R.	13
Velasco, Brazos and Northern Rwy	10	Wilkes Barre and Harveys Lake R.R.	12
Vermont and Massachusetts R. R.	1,313	Wilkes Barre and Hazelton Rwy	10
Vermont Valley R. R	52	Wilkes Barre and Scranton Rwy	9
Vicksburg, Shreveport and Pacific Rwy	16	Williams Valley R. R.	250
Vincentown Branch R. R	23	Williamsport and North Branch R. R.	98
Virginia and Southwestern Rwy	56	Williamsville, Greenville and St. Louis Rwy	9
Virginia and Truckee R. R	10	Willmar and Sioux Falls Rwy	6
Virginia-Carolina Rwy	8	Wilmington and Northern R. R.	22
Wabash R. R.	1,974	Wilmington Rwy. Bridge Co	3
Wabash, Chester and Western R. R.	14	Wilton R. R.	230
Walla Walla and Columbia River R. R.	6	Wind Gap and Delaware R. R	11
Wallkill Valley R. R.	14	Winifrede R. R.	82
Ware River R. R	152	Winona Bridge Rwy	12
Warren R. R	431	Winston and Bone Valley R. R.	6
Warren and Corsicana Pacific Rwy. (estimated)	10	Wisconsin and Michigan Rwy	40
Warrenton R. R.	16	Wisconsin Central Rwy	11
Washington and Columbia River Rwy.	10	Wisconsin, Minnesota and Pacific R. R.	6
Washington and Franklin Rwy	11	Wisconsin Western R. R	8
Washington and Great Northern Rwy.	4	Wood River Branch R. R.	39
Washington County Rwy	2	Woodstock Rwy	44
Washington, Potomac and Chesapeake R. R.	9	Woonsocket and Pascoag R. R	5
Washington Run R. R.	17	Worcester, Nashua and Rochester R. R.	796
Washington Southern Rwy	1	Wrightsville and Tennille R. R.	63
Watauga R. R.	5	Wyoming and Missouri River R. R	4
Waukegan and Mississippi Valley Rwy.	3	Wyoming Western R. R	7
Waynesburg and Washington R. R	74	Yazoo and Mississippi Valley R. R.	14
Weatherford, Mineral Wells and Northwestern Rwy	14	Yellowstone Park Rwy	3
Wellington and Powellsville R. R.	9	York, Hanover and Frederick R. R.	12
Wellston and Jackson Belt Rwy	8	York Harbor and Beach R. R	888
Wellsville, Coudersport and Pine Creek R. R.	13	Youghiogheny and Wick Haven R. R.	5
West Jersey and Seashore R. R	842	Yreka R. R.	126
West Shore R. R.	14	Zanesville and Western Rwy	7
		Zanesville Terminal R. R.	9
		Total	327,851

WEDNESDAY, *May 10, 1905.*

The committee met pursuant to adjournment.

Present: The chairman and Senators Cullom, Kean, Foraker, Clapp, and Newlands.

The following papers were ordered by the committee to be placed in the record:

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM,
OFFICE OF ASSISTANT TO PRESIDENT,
Chicago, May 3, 1905.

Mr. VICTOR MORAWETZ,
Chairman of Executive Committee, New York City.

MY DEAR MR. MORAWETZ: Your letter of April 21 was duly received. I have not seen Mr. Cowan's testimony before the Senate Committee on Interstate Commerce, and am not, therefore, in position to give information for direct evi-

dence on the rates which he may have specifically referred to, but I do not think anything has transpired during the last four or five years in the matter of cattle rates from the Southwest to points in Nebraska and South Dakota which would warrant his statement, if he made it, that in that period these rates have been almost doubled.

I attach hereto four statements which I think will give you the information relating to our rates which you desire, and from which you will see that while the rates now current are in many cases in excess of those in effect three, four, and five years ago, in no case has the increase been more than $10 per car, and in many cases those rates are less than the rates prevailing in 1901 and 1902.

Statements A and B give our rates for the last five years from the representative cattle shipping points in the Pecos Valley—i. e., Panhandle, Canyon City, Hereford, and Bovina—to points in Nebraska, Wyoming, and South Dakota. From no other points on our lines in the Southwest are cattle shipped to these northern feeding points.

Statement C shows the rates from same points of shipment to feeding points on our own lines in Kansas.

Statement D shows rates from points on our main lines in Texas to the principal feeding points in Kansas, i. e., Cedarvale, Elgin, Caney, and Arkansas City. You will note from the last statement that there have been no changes as between 1901 and 1905 rate, and that as to Statement C the changes in the five years have been insignificant.

If these statements do not meet your requirements, and you will tell me exactly what additional information is desired, I shall be glad to furnish it.

Yours, truly,

W. B. JANSEN.

A.

Stock cattle, carloads, 36-foot car.

From Panhandle, Canon City, Hereford, and Bovina, Tex., to—	1902.	1902.[a]	1903.	1904.	1905.	1901.
Andrews, Nebr	$91.50	$95.00	$90.00	$100.00	$100.00	$91.50
Bordeau, Nebr	91.50	95.00	90.00	90.00	90.00	91.50
Chadron, Nebr	91.50	95.00	90.00	90.00	90.00	91.50
Clinton, Nebr	91.50	95.00	90.00	90.00	90.00	91.50
Cody, Nebr	91.50	95.00	90.00	90.00	90.00	91.50
Crawford, Nebr	91.50	95.00	90.00	90.00	90.00	91.50
Crookston, Nebr	91.50	95.00	90.00	90.00	90.00	91.50
Dakota Junction, Nebr	91.50	95.00	90.00	90.00	90.00	91.50
Eli, Nebr	91.50	95.00	90.00	90.00	90.00	91.50
Fisher, Wyo	90.20	93.70	90.00	100.00	100.00	.....
Georgia, Wyo	91.50	95.00	90.00	90.00	90.00	.....
Gordon, Nebr	91.50	95.00	90.00	90.00	90.00	91.50
Harrison, Nebr	91.50	95.00	90.00	100.00	100.00	91.50
Hay Springs, Nebr	91.50	95.00	90.00	90.00	100.00	91.50
Irwin, Nebr	91.50	95.00	90.00	90.00	100.00	91.50
Keeline, Wyo	.....	93.70	90.00	100.00	100.00	.....
Lost Springs, Wyo	90.20	93.70	90.00	100.00	100.00	.....
Lusk, Wyo	90.20	93.70	90.00	100.00	100.00	.....
Mayville, Wyo	90.20	93.70	90.00	100.00	100.00	.....
Merriman, Nebr	91.50	95.00	90.00	90.00	100.00	91.50
Nenzel, Nebr	91.50	95.00	90.00	100.00	100.00	91.50
Noderanch, Wyo	90.20	93.70	90.00	100.00	100.00	.....
Rushville, Nebr	91.50	95.00	90.00	90.00	90.00	91.50
Shawnee, Wyo	90.20	93.70	90.00	100.00	100.00	.....
Valentine, Nebr	91.50	95.00	90.00	90.00	90.00	91.50
Van Tassel, Wyo	90.20	93.70	90.00	100.00	100.00	.....
Whitney, Nebr	91.50	95.00	90.00	90.00	90.00	91.50
Ardmore, S. Dak	91.50	95.00	95.00	95.00	95.00	91.50
Big Muddy, Wyo	85.25	88.75	95.25	95.25	95.25	.....
Casper, Wyo	85.25	88.75	95.25	95.25	95.25	.....
Douglas, Wyo	85.25	88.75	95.25	95.25	95.25	.....
Fetterman, Wyo	85.25	88.75	95.25	95.25	95.25	.....
Glen Rock, Wyo	85.25	88.75	95.25	95.25	95.25	.....
Inez, Wyo	85.25	88.75	95.25	95.25	95.25	.....
Irvine, Wyo	88.25	88.75	95.25	95.25	95.25	.....
Strouds, Wyo	85.25	88.75	95.25	95.25	95.25	.....
Wayside, Nebr	91.50	95.00	95.00	95.00	95.00	91.50

[a] Effective Mar. 1, 1902.

B.

Stock cattle, carload, 36-foot car.

From Bovina, Panhandle, Canyon City, and Hereford, Tex., to—	1902.	1902.[a]	1903.	1904.	1905.	1901.
Alger, Wyo	$91.50	$95.00	$100.00	$110.00 / [b]100.00	$110.00	$91.50
Arvada, Wyo	91.50	95.00	100.00	100.00	100.00	91.50
Black Hawk, S. Dak	91.50	95.00	100.00	100.00	100.00	91.50
Brennan, S. Dak	91.50	95.00	100.00	100.00	100.00	91.50
Buffalo Gap, S. Dak	91.50	95.00	100.00	100.00	100.00	91.50
Fairburn, S. Dak	91.50	95.00	100.00	100.00	100.00	91.50
Gillette, Wyo	91.50	95.00	100.00	100.00	100.00	91.50
Hermosa, S. Dak	91.50	95.00	100.00	100.00	100.00	91.50
Lariat, Wyo	91.50	95.00	100.00	100.00	100.00	91.50
Moorecroft, Wyo	91.50	95.00	100.00	100.00	100.00	91.50
Oelrichs, S. Dak	91.50	95.00	97.50	97.50	97.50	91.50
Osage, Wyo	91.50	95.00	100.00	100.00	100.00	91.50
Piedmont, S. Dak	91.50	95.00	100.00	100.00	100.00	91.50
Rapid City, S. Dak	91.50	95.00	100.00	100.00	100.00	91.50
S. and G. Ranch, Wyo	91.50	95.00	100.00	100.00	100.00	-------
Rongis, Wyo	91.50	95.00	100.00	100.00	100.00	91.50
Sheridan, Wyo	91.50	95.00	103.00	108.00	108.00	91.50
Smithwick, S. Dak	91.50	95.00	97.50	97.50	97.50	91.50
Sturgis, S. Dak	91.50	95.00	100.00	100.00	100.00	91.50
Thedford, Nebr	-------	-------	100.00	100.00	90.00	-------
Whitewood, S. Dak	91.50	95.00	100.00	100.00	100.00	91.50
Aberdeen, Mont	101.50	105.00	110.00	110.00	110.00	101.50
Ballentine, Mont	101.50	105.00	110.00	110.00	110.00	101.50
Billings, Mont	101.50	105.00	110.00	110.00	110.00	101.50
Fort Custer, Mont	101.50	105.00	110.00	110.00	110.00	101.50

[a] Effective March 1, 1902. [b] To April in 1904.

C.

Stock cattle, carload, 36-foot car.

From Panhandle, Canyon City, Hereford, and Bovina, Tex., to—	1902.	1903.	1904.	1905.	1901.
Alma, Kans	$60.50	$66.00	$66.00	$66.00	$68.30
Arkansas City, Kans	49.20	49.50	49.50	49.50	49.30
Concordia, Kans	62.50	69.10	69.10	69.10	69.30
Dodge City, Kans	-------	-------	52.80	52.80 / [a]47.50	66.80
Elgin, Kans	52.80	53.90	53.90	53.90	62.00
Emporia, Kans	60.20	63.80	63.80	63.80	60.20
Englewood, Kans	-------	-------	50.60	50.60 / [a]47.50	60.80
Eureka, Kans	57.20	59.40	59.40	59.40	57.30
Hutchinson, Kans	48.40	53.90	53.90	53.90	52.40
Wichita, Kans	49.00	53.90	53.90	53.90	49.00

[a] Effective May 2, 1905. Terminal rate.

D.

Single car lots.

To Cedarvale, Elgin, Caney, and Arkansas City from—	1902.	1903.	1904.	1905.	1901.
San Angelo, Tex	$69.00	$69.00	$69.00	$69.00	$69.00
Talpa, Tex	63.25	63.25	63.25	63.25	63.25
Brownwood, Tex	63.25	63.25	63.25	63.25	63.25
Lampasas, Tex	63.25	63.25	63.25	63.25	63.25
Fort Worth, Tex	39.10	39.10	39.10	39.10	39.10
Morgan, Tex	57.50	57.50	57.50	57.50	57.50

In train lots, 10 cars or more.

To Caney and Elgin from—	1902.	1903.	1904.	1905.	1901.
San Angelo, Tex	$63.25	$63.25	$63.25	$63.25	$63.25
Talpa, Tex	57.50	57.50	57.50	57.50	57.50
Brownwood, Tex	57.50	57.50	57.50	57.50	57.50
Lampasas, Tex	57.50	57.50	57.50	57.50	57.50
Fort Worth, Tex	33.35	33.35	33.35	33.35	33.25
Morgan, Tex	51.75	51.75	51.75	51.75	51.75

The CHAIRMAN. I have had a message from Mr. Bacon, in which he says that he is not well enough to go on with his testimony to-day, a fact which he very much regrets, but hopes to be well enough in a day or two to be able to proceed with his statement. I returned a message to him, on behalf of the committee, that we hoped he would soon be well enough to proceed with his statement, and that he should have the opportunity to do so.

STATEMENT OF MR. THOMAS H. SHEVLIN.

The CHAIRMAN. Please state your name, residence, and occupation.

Mr. SHEVLIN. My name is Thomas H. Shevlin; my home is in Minneapolis, Minn.; my business is manufacturer of lumber.

The CHAIRMAN. You may proceed with your statement.

Mr. SHEVLIN. Does the committee want me to state the extent of my business, etc.?

The CHAIRMAN. The extent of the business you are engaged in.

Mr. SHEVLIN. I am connected with and a large owner of, and, I might say, have the policy making of half a dozen manufacturing concerns engaged in the manufacture of lumber, with headquarters at Minneapolis, in the State of Minnesota. We shall manufacture this year 225,000,000 feet of lumber. We ship daily 50 carloads of lumber—about 15,000 cars per year. Ninety-five per cent of that lumber is marketed in the States of North and South Dakota, Minnesota, Iowa, and Illinois; the balance of it is marketed in Nebraska and Kansas.

While we are not always satisfied with the methods pursued by the railroads, and while we are constantly fighting them to give us lower rates, we think that we would be better served by dealing directly with the traffic managers than we would to have to come and appeal to some tribunal under the Government.

The contention that we have at all times is in regard to the rates made from the Pacific coast and the South into that territory. For the distance that the railroads carry this lumber from the South and the West their rates are relatively much lower than ours.

Senator CULLOM. From where?

Mr. SHEVLIN. From the West; for instance, Seattle has a 40-cent rate from that country, say, to Sioux City, Iowa; we have a 20-cent rate, and relatively the distance is four times as great from Seattle to Sioux City as it is from Bermidji, Minn., where one of our mills is located, to Sioux City. We feel that that is a hardship.

Senator CULLOM. You feel, sometimes at least, that the difference in distance ought to give you a lower rate as compared with the other?

Mr. SHEVLIN. A distance tariff would be a splendid thing for me. If I could have that distance tariff as a lumberman and not have it applied to my farmer, it would be a splendid thing for me. If a farmer could continue to pay the rates he has now to get to the markets of the world and deliver a barrel of flour from Minneapolis to Liverpool cheaper than he could have it hauled to my residence in Minneapolis—if he could have that continued, I would like to have my distance tariff, and then I could put my lumber up to $3 per thousand.

Senator FORAKER. You would shut out the Seattle man.

Mr. SHEVLIN. That is what I have been trying to do all the time, but the railroad men won't let me. If the whole country does not prosper I can't prosper. You can't get away from that. If the States of North and South Dakota, Iowa, and Illinois do not have reasonable rates to the Gulf and seaboard they can not buy my lumber. For that reason, as a large manufacturer and business man, I am convinced that we do not need to give any greater power to the Interstate Commerce Commission than it has at the present time. The country is prosperous and everybody is well employed. The railroads are tremendous consumers of lumber, iron, and material, great employers of labor, and whenever you cripple them you cripple the whole country.

The CHAIRMAN. I understand, Mr. Shevlin, from your remarks that you are a large shipper and are entirely satisfied with the existing condition of things.

Mr. SHEVLIN. I am never satisfied, Mr. Chairman, but I am far nearer satisfied than I would be to have to come to some tribunal—the Senate or Congress. I would rather go to a man that was an expert in these matters and talk with him. I am never satisfied. I am all the time fighting the railroads for lower rates.

The CHAIRMAN. But, generally, you think the rates are sufficiently low?

Mr. SHEVLIN. I do.

The CHAIRMAN. You do not know of any extortionate or excessive rates in your State or in your community?

Mr. SHEVLIN. I do not.

The CHAIRMAN. Or any rebates?

Mr. SHEVLIN. I have had no rebates since you passed that villainous law.

Senator CULLOM. You do not want to go behind that record?

Mr. SHEVLIN. No, sir. As a matter of fact, we are better without rebates if the rates are reasonable. We did business ninety days, and then we did not have anything for our men to do. We are better off to keep the business going along and ship 50 cars a day the year around than to ship 200 cars a day for a time and fill up all our customers, and then spend three months in idleness.

The CHAIRMAN. You think it is good business policy to leave rate making to the railroads, with power lodged in the courts to restrain the charging of extortionate or excessive rates?

Mr. SHEVLIN. They have that power now.

Senator CULLOM. Where do you do business?

Mr. SHEVLIN. Our headquarters are at Minneapolis, but we have

in the State of Minnesota six other mills on the Great Northern and Northern Pacific lines.

Senator CULLOM. You say you are not getting rebates?

Mr. SHEVLIN. I am not.

Senator CULLOM. Not violating the law in any way?

Mr. SHEVLIN. Not in any way.

Senator CULLOM. What do you hear among the people about what they think ought to be done by Congress with reference to this subject? Do you hear anything?

Mr. SHEVLIN. I hear a great deal from people who never ship lumber or anything else; they make a great contention about what ought to be done to regulate our business. But among the people who are doing business and who are shippers I do not hear that they want the Government to come in and make any regulation of rates for the railroads. Suppose I wanted to ship lumber to a new market and wanted a low rate to get the thing started, and suppose I had to come to some tribunal of the Government. I would get action in about two years after the time had expired that I needed to do my business. I can go to the traffic managers of the railroads and tell them why I should have that low rate; they would probably grant it.

Senator CULLOM. You do not suppose anybody is proposing to pass a law requiring you to come to a commission before you could get an arrangement by which you could get low rates in that way, Mr. Shevlin?

Mr. SHEVLIN. I do not think that; but suppose I wanted to get a rate?

Senator CULLOM. Suppose you did want to get a rate. You could get from the railroad whatever rate they would agree to, and if it turned out that they were charging you too much you could then come to the Commission.

Mr. SHEVLIN. Suppose they made it a lower rate for me to induce goods to go into the market, and by and by the railroads wanted to raise the rate. People would fight us with that rate at first, even if it was a fair rate. There is no reason why it should be raised. But the railroad, instead of letting me induce goods to go to the market, would say, "We can't do that. If we did, these people would want it made a permanent rate, and we could never raise the rate again." Consequently, instead of broadening my market, it would be narrowed all the time.

Senator CULLOM. You would not be narrowed by the Commission if it thought you were being treated fairly.

Mr. SHEVLIN. I don't know what other people's experience has been in trying to do business with the Government, but mine has not been satisfactory; they are too slow.

Senator CULLOM. Have you had anything to do with the Government?

Mr. SHEVLIN. I have had more or less. I have sold lumber to the Government; but there is too much red tape. I don't want to sell any goods to the Government; it is too slow.

Senator CULLOM. You do not love the Government, do you?

Mr. SHEVLIN. Oh, yes; I love the Government; but I don't want to do business with it; it is too slow. It is the best Government in the world, and I love it.

Senator CULLOM. The Government has always paid you for what it bought, has it not?

Mr. SHEVLIN. They have paid me fine. The fact is, we get paid by everybody; our debts don't amount to anything.

Senator FORAKER. How many mills have you?

Mr. SHEVLIN. Seven, in the State of Minnesota.

Senator FORAKER. What is the aggregate amount of your business?

Mr. SHEVLIN. In feet?

Senator FORAKER. In dollars is what I had in mind. You may state it both ways.

Mr. SHEVLIN. We manufacture this year 225,000,000 feet of lumber, which gives a tonnage of 15,000 cars of lumber annually.

Senator FORAKER. You ship that where?

Mr. SHEVLIN. Ninety-five per cent of it to North and South Dakota, Minnesota, Iowa, and Illinois; the other 5 per cent goes into Kansas, Nebraska, and Wisconsin.

Senator FORAKER. You do not export anything?

Mr. SHEVLIN. No, sir.

Senator FORAKER. You have a product that is sent from where?

Mr. SHEVLIN. From Bermidji, Minn., to Sioux City, Iowa.

Senator FORAKER. What is that distance?

Mr. SHEVLIN. The distance is about 350 miles.

Senator FORAKER. The man who ships lumber into Iowa from Seattle, you say, has a 40-cent rate?

Mr. SHEVLIN. Yes, sir; and the man from Louisiana has a 29-cent rate, with the result that I sell very little lumber in Sioux City; they undersell me.

Senator FORAKER. You meet competition right along?

Mr. SHEVLIN. Yes, sir.

Senator FORAKER. You would be glad to have a change, provided the farmer should not have a change on him?

Mr. SHEVLIN. Certainly. I would like to be able to charge $3 a thousand, but what good would it do me if the farmer could not market his grain abroad? If he couldn't do that, he couldn't buy my lumber.

Senator FORAKER. I am only asking your views.

Mr. SHEVLIN. Excuse me; I don't mean to be impertinent.

Senator FORAKER. No; we are glad to have you answer in your own way. Your statement to the committee is that the rates are not high.

Mr. SHEVLIN. I do not think so.

Senator FORAKER. We had presented yesterday a paper, in the first part of the testimony of Mr. Bacon, in which the statement is made in a petition to Congress on this subject. That statement is that they want relief from the imposition of unreasonable and oppressive charges for the performance of public service in the transportation of passengers and property. Have you any knowledge of any unreasonable and extortionate charges being imposed?

Mr. SHEVLIN. I have not. How any man who manufactures lumber in the West can ship it and not consider that he is getting reasonable rates is beyond my comprehension.

Senator FORAKER. Your statement, now, is that there is no complaint except from people who do not do any shipping. This paper

is signed by the representatives of a great many business associations apparently. For instance, by the American Shippers' Association—L. T. Jamne, of Chicago, Ill., and E. E. Williamson, of Cincinnati, Ohio. Do you know anything about that association?

Mr. SHEVLIN. I do not.

Senator FORAKER. Do you know anything about the American Short Horn Breeders' Association, of Chicago, Ill.?

Mr. SHEVLIN. I do not.

Senator FORAKER. This paper is signed by a great many people who undoubtedly do represent business associations that are engaged in making shipments by rail, so that the complaints that come to us do come from men who do business with the railroads.

Mr. SHEVLIN. Senator, you understand that I say I am complaining and fighting the railroads all the time, but I don't want to jump out of the frying pan into the fire. I would rather do business with them and fight them than to do no business at all.

Senator FORAKER. One of these associations is the National Wholesale Lumber Dealers' Association, Robert W. Higbie, New York City. Do you know anything about that association?

Mr. SHEVLIN. I do.

Senator FORAKER. Mr. Higbie testified yesterday——

Mr. SHEVLIN. I don't know Mr. Higbie. Did he say he manufactured lumber, or is he a kind of secretary?

Senator FORAKER. I think perhaps he handles it; I do not remember just what his statement was.

Mr. SHEVLIN. I guess you will find that he is one of the secretaries who does the talking for the lumber.

Senator FORAKER. Notwithstanding we have this kind of paper presented, your statement is that there are no extortionate and unreasonable rates imposed, so far as you are aware?

Mr. SHEVLIN. There are not.

Senator FORAKER. Do you know of anybody else in your business in your part of the country who does know of any?

Mr. SHEVLIN. I do not.

Senator FORAKER. I understood you to make the statement that you do not get rebates?

Mr. SHEVLIN. I am not getting one dollar in the way of rebates, and have not for several years.

Senator FORAKER. That is your statement?

Mr. SHEVLIN. Absolutely. There has been none in my State, so far as lumber is concerned, for if there had been any I think I would know it.

Senator FORAKER. Has there been any trouble in your State about elevator charges, terminal charges, or private car lines?

Mr. SHEVLIN. In our business in the North, we don't have private cars.

Senator FORAKER. You have no trouble of that sort?

Mr. SHEVLIN. No, sir; we don't have any trouble about getting cars.

Senator FORAKER. Can you tell us of any abuse that ought to be removed, and to meet which there is no legislation now provided?

Mr. SHEVLIN. I can not.

Senator DOLLIVER. Following the line of the suggestion made by *Senator Foraker's* questions, there was filed here yesterday and in-

cluded in the testimony of Mr. Bacon a memorial from what appears to be a lumber association in the southwest, called the Southwestern Lumbermen's Association, and presenting a rather striking list of discriminations and excessive rates or charges on lumber taken from the Southwest to Kansas City, Omaha, and Chicago. Do you know anything about that?

Mr. SHEVLIN. I will answer that in this way: That that ground in there is being sought for the market by the South, by the people on the coast, in Idaho, and by the people from the North. On a distance-tariff basis, if we send our product into that market, we from the North, being very much nearer to that market, should have a much lower rate, as compared with the man in the South and the man in the West, than we have to-day. When Mr. Hill built his railroad to the Pacific coast he made an extremely low rate of about 40 cents per hundredweight to haul lumber from the Rocky Mountains and the Cascade Mountains and over the desert into Nebraska. That brought that lumber into competition with the lumber manufacturers in the South and the lumber manufactured in the North, making it very much cheaper to the consumer. Why? So much lumber is consumed. If I could have a rate that would permit me to ship lumber from the Pacific coast to that territory I could get more for my lumber, and consequently these rates have been built up largely, not on the distance of the haul, but to enable the people who manufacture the lumber to find a market for it. At a greater rate than 40 cents we could close the market in Seattle and put them out of the way of doing business at a profit. If I could manufacture lumber in that way I could cause the business in Seattle to shut down. This southern fellow wants to come into Nebraska and Kansas and sell his lumber, and he wants a rate lower than the man coming from the Pacific coast.

We have competition from Idaho. There has been a great deal of development in Idaho in the manufacture of lumber in the last three years, and the product of those mills has been put upon the market. It is coming into Western Nebraska and Kansas and North Dakota, and the effect is to drive me out of the western half of North Dakota. I used to have a sawmill in North Dakota, and had a mill at Crookston, in Minnesota, that manufactured 45,000,000 feet, and one at St. Elaire making 20,000,000 a year, but I have no market in North Dakota. Why? Because the rate made from Idaho to that country is so low and their stumpage is so cheap that it has driven me out. The same thing has happened to the fellow in the South. His production has become so great that he wants a market and wants to drive the other fellow out. For that purpose he wants a rate, just as I do. I am all the time fighting the railroads and saying, "You ought to give me such a rate," and threatening to do everything to them.

Senator DOLLIVER. In a State like Iowa, where the business of manufacturing lumber has somewhat declined in recent years on account of the disappearance of the material along our rivers, there is great complaint that something has added continually to the price of lumber, so that our farmers are irritated by the additional cost of building, and, in fact, for a time everybody suspended building on the ground of the tremendous cost of lumber. What part of that is due to freight rates?

Mr. SHEVLIN. Freight rates from the manufacturing points have constantly declined from our country, from the South and the West, and from the State of Iowa. What has made lumber higher has been the increased value of the stumpage. The stumpage of the United States of America is steadily decreasing and becoming more valuable. Consequently that has made lumber higher. Then we have joined with the Iowa man who has been getting 50 cents a bushel for his corn, and the same prices relatively for everything else, and they have been enjoying great prosperity. We have also enjoyed their fine prosperity and fair profits.

Senator DOLLIVER. But the price of lumber to our people has doubled more than once.

Mr. SHEVLIN. Doubled?

Senator DOLLIVER. I think so.

Mr. SHEVLIN. Well, lumber is bringing a good price, but the railroad rates haven't caused it. It has been because of the enormous consumption of lumber in this country. When you cut a tree down it takes one hundred and fifty years to grow another. We have been consuming lumber in the last fifty years as never before, and we have been unable to produce lumber fast enough to meet the demands. That is all there is to it. The railroads haven't anything to do with it. Their rates are not higher.

Senator DOLLIVER. I notice, in the newspapers of yesterday, that the price-list committee of the Lumbermen's Association of the Mississippi River, Wisconsin Lumbermen's Association, and the Northwestern Lumbermen's Association have agreed to advance the prices on all classes of lumber 50 cents a thousand.

Mr. SHEVLIN. I will answer that by saying that to-day in the United States there is the greatest amount of building, the greatest consumption of lumber that has ever been known before.

Senator DOLLIVER. Do all these associations operate through a price-list committee?

Mr. SHEVLIN. They get together, and if they think lumber ought to raise they advise that the price be put up. I will say this for the lumber business—that there are no trusts in it.

Senator DOLLIVER. That sounds suspicious.

Mr. SHEVLIN. It is one thing to say you will advance lumber, and it is another thing to advance it. I have gone into meetings where we have said that we would advance the price of lumber $1, and they all agreed to it, but when they got outside about 25 per cent commenced selling at the old price or a little less. There is only one thing that governs these matters, and that is supply and demand.

Senator DOLLIVER. You appear to be satisfied, and the railroads appear to be satisfied, with this situation, and you speak of knowing of no dissatisfaction about it.

Mr. SHEVLIN. I say we are dissatisfied all the time, and trying to get reduced rates.

Senator DOLLIVER. Are the lumber people complaining?

Mr. SHEVLIN. They are not complaining about the price of corn. In 1896 I was selling my lumber and was not making a red cent—just dodging the sheriff; corn was bringing about 15 cents a bushel. Then I could not sell any lumber at any profit.

Senator DOLLIVER. We have been told that.

Mr. SHEVLIN. But it is so.

Senator DOLLIVER. But when people read a thing like that in the newspapers it makes them hot.

Mr. SHEVLIN. What difference would that make to them if they had the money to buy the lumber with? How much lumber does it take to build an ordinary sized house?

Senator DOLLIVER. A good deal.

Mr. SHEVLIN. Twenty-five thousand feet, at $2 a thousand, would be $50 for each house. It only takes 25,000 feet of lumber to build a reasonable sized house. But you have got to realize that to-day the greatest increase of cost of anything that is manufactured is the cost of labor. Did that ever occur to you? When you employ a man to-day he will only do about 60 per cent as much work as when you paid him $1.50 a day, and you are now paying him $2 a day.

Senator DOLLIVER. The people of Iowa do not complain of the law of supply and demand; they furnish the demand, which seems to be thoroughly scattered, millions of people unconsciously contributing to it. What puts them on their guard is that the supply seems to have been organized so that a price-list committee for a few associations can determine that in a thoroughly conscious way.

Mr. SHEVLIN. I can tell you, and tell you honestly, that our business is done absolutely on the law of supply and demand. We are having great prosperity to-day because there is tremendous prosperity in the country. Every section is building up as never before. A man in Memphis, Tenn., said to me: "Shevlin, you can't go into a hotel in Memphis—you can't hire an office; every office is taken. Every piece of timber I try to buy I find three other fellows trying to buy." That is why prices are high. I am not sorry for the people of Iowa. What State in the Union has prospered more than Iowa has? They are rich people, good people.

Senator DOLLIVER. I do not deny these charges.

Mr. SHEVLIN. We have sold them lumber. We love them. They are good pay. We love Iowa. When we had trouble in getting our money from others, the people of Iowa paid us money for our lumber.

Senator FORAKER. At any rate, the discontinuance of those prosperous times is not due to the railroads?

Mr. SHEVLIN. They have nothing to do with it.

Senator KEAN. You do not think the Commission ought to fix the price of lumber, do you?

Mr. SHEVLIN. No, sir; but let the business of the country alone. Everybody is well employed, and everything is going on well. Why not let it alone? You can't legislate prosperity into the country.

Senator DOLLIVER. You spoke of having controversies with railroad companies. Did you ever have one that you thought involved a substantial interest in your business?

Mr. SHEVLIN. I am all the time going to the railroads and saying: "You are bringing this coast lumber for 40 cents and charging me 20 cents, when my haul is not a quarter of the coast-lumber haul, and I say it is an outrage."

Senator DOLLIVER. You used harsh language.

Mr. SHEVLIN. Yes; I did.

Senator DOLLIVER. Have you ever been led to reflect that there ought to be or might be some way devised to bring a controversy of that kind to a settlement by some method of adjudication?

Mr. SHEVLIN. Would it be a very good thing to get a rate that

would shut out the Puget Sound man? If I am making plenty of money, why not give the other fellow a show?

Senator DOLLIVER. That is altruism almost unknown.

Mr. SHEVLIN. You are wrong about that in that business. As I have already said, I can't be prosperous without my neighbors are prosperous and without the country prospering.

Senator DOLLIVER. You can not be prosperous without your customers being prosperous.

Mr. SHEVLIN. No. You know what it costs the farmer in your State to put his corn in a foreign market. It has been very cheap indeed, and that cheap rate enabled him to get more money for his corn, and with that money he could buy lumber, but if he had a distance tariff to the seaboard he would be without a market. In every State in the Union where they have had a commission, it has all been on distance tariff. I can't see how you are going to make a rate from Minneapolis in favor of the Coast or in favor of the South as against some other section of the country; you would simply have to get on distance lines, and then make tariffs. What built all the commerce of the country has been the abnormally low rates for hauling products to the markets. When you pass laws to stop the building of railroads you will stop the development of the country. We have just commenced to develop. We are going to irrigate the Rocky Mountains and all those States, and we are going to populate that desert country with millions of people. The Coast is just beginning its development. You stop railroads developing in that country, and you will have a stagnation and panic that Bryan's election would be only a small matter compared with.

Senator FORAKER. Senator Newlands, you may take the witness.

Senator NEWLANDS. With what association are you connected?

Mr. SHEVLIN. I am connected with the Mississippi Valley Lumbermen's Association. I am a director in it.

Senator NEWLANDS. The lumber producers in different regions have such associations, have they?

Mr. SHEVLIN. Yes, sir.

Senator NEWLANDS. And they work in harmony regarding the securing of rates?

Mr. SHEVLIN. They do not. Our association is all the time trying to fight to get better rates.

Senator NEWLANDS. But I mean the members of each association work in harmony in their common interests as to freight rates?

Mr. SHEVLIN. In a kind of way.

Senator NEWLANDS. Is there anything that keeps them together other than the common interest of getting a reasonable freight rate and a common interest in reaching out for markets that are now not under their control.

Mr. SHEVLIN. The thing I am most interested in with my association is, first, to see if we can not limit the production. I say to our people all the time "Don't let us cut so much timber, and we will get better prices." The next is, a grading association. We used to all make grades for ourselves, and we used to think "I am smarter than the other fellow," forgetting that the other fellow was getting $1.25 for lumber while we were only getting $1. But we woke up one morning to find out that we must have grading, and we graded. I

am interested in that more than anything else our association has ever done.

Senator NEWLANDS. So that the object of the association is not the securing of reasonable freight rates?

Mr. SHEVLIN. We have a committee for that purpose, but I have never known them to accomplish anything.

Senator NEWLANDS. That is one of the minor purposes of the association, is it?

Mr. SHEVLIN. Yes, sir.

Senator NEWLANDS. Do you think anything is to be apprehended from the fact that the men who control these railroads are also the controlling spirits in the great industrial combinations of the country, such as steel, copper, oil, and things of that kind?

Mr. SHEVLIN. I think every combination in this country that is not created for the purpose of cheapening a commodity to the consumer will bust, because they will invite such competition that there will be overproduction. I don't care how much money they have. The only way Mr. Rockefeller won out was to make his oil so cheap that nobody could beat him in the competition. The same way with sugar.

Senator NEWLANDS. Assuming that to be the case, do you fear, or not, that the control by the same men, both of transportation and of the bulk of the production in certain lines, will give to those men as producers an advantage over other competitors who do not control transportation?

Mr. SHEVLIN. If it were true in my business——

Senator NEWLANDS. It is not true in your business?

Mr. SHEVLIN. No.

Senator NEWLANDS. Is not that because, as yet, no such combination has been formed regarding lumber?

Mr. SHEVLIN. It may be true. I don't know what the cause is, but it is not so.

Senator NEWLANDS. Is there any great combination that controls any very large portion of the production of the lumber of this country?

Mr. SHEVLIN. Not that I know of.

Senator NEWLANDS. Now we will assume that there is a combination of that kind that controls 50 per cent of the production of lumber, and we will assume that the men who control that production also control the railroad lines over which the lumber is carried. Would you assume from that very fact that those producers would get an advantage over their competitors in the business that would enable them more and more to monopolize the production of lumber?

Mr. SHEVLIN. It would be all owing to what influence they had with the railroad and whether it was possible to get rebates or not.

Senator NEWLANDS. I am assuming that they control the railroads.

Mr. SHEVLIN. If they control the railroads they could get rebates then.

Senator NEWLANDS. Could that system be so worked as to escape detection?

Mr. SHEVLIN. I don't believe so.

Senator NEWLANDS. I understood you to say that you have not had rebates for several years. What was the character of the re-

bates you received, and what was the nature of the transaction under which you received them?

Mr. SHEVLIN. We had a 17-cent rate to the Missouri River; we used to ship lumber at 10 cents and get a rebate for the other 7.

Senator NEWLANDS. Those rebates were paid by checks?

Mr. SHEVLIN. By cash. Don't want any checks.

Senator NEWLANDS. By whom were they paid to you?

Mr. SHEVLIN. I don't remember. They were not paid to me.

Senator NEWLANDS. But you got the benefit of it.

Mr. SHEVLIN. Yes, sir.

Senator NEWLANDS. Was that a secret or an open transaction?

Mr. SHEVLIN. It was a secret transaction.

Senator NEWLANDS. How was it brought to you—at the suggestion of the producer or at the suggestion of the transportation company?

Mr. SHEVLIN. When my traveling man went down to the Missouri River he found the yellow-pine fellow was underselling us. This was about eighteen or twenty years ago. We were the sole occupants of that territory at first with our white pine, and then the yellow pine commenced to come. It came on, growing and growing in this competition, and I would say to the railroad man, "We are being driven out of the market, we must have a less rate." He would say, "We can't cut down on this rate." I would say, "But you have got to give us a better rate." Then he would say, "Bring on your lumber, and we will fix you up." Then came along this law, and injunctions, and they have stopped the whole business.

Senator NEWLANDS. That has been stopped since injunctions?

Mr. SHEVLIN. Yes, sir.

Senator NEWLANDS. You know there is a legal question, do you not, whether injunction will lie in such a case?

Mr. SHEVLIN. I know the railroads won't give us any rebates.

Senator NEWLANDS. But, as I understand, the fact is that the railroads, who were defendants in that action, made no legal fight as to the power of the court to issue an injunction, and that the court itself, in issuing the injunction, was exceedingly doubtful as to its power, and the matter has never been seriously contested in the courts.

Senator DOLLIVER. That was before the Elkins law.

Senator NEWLANDS. Before the Elkins law. If that be the case, I presume your wish would be that the remedy by injunction should be made thoroughly effective. Do you think that is the proper course, or do you prefer the old system of rebates?

Mr. SHEVLIN. I prefer the system we have now, because I was not as well off with the rebates as I am now, because I do not get any more money for my lumber. When I had these rebates I would ship a lot of lumber, and fill my customers up for four months, so that they did not have the money to pay for all the shipments, and I had to carry them along, and the consequence was that I had to stop manufacturing, and so my men would be two or three months with nothing to do. Now, I like to have my business go on regularly every day, so that my crew will be employed every day, and I would rather have my customers pay me every sixty days.

Senator NEWLANDS. Assuming the case I speak of, that some great combination had secured a majority of the production of lumber in the country, that the men who control that combination also control the

railroads; do you think there is any vigilance that could prevent that combination from getting an advantage in freights in some way, if it were desired, and in that way destroy the efforts of the competitors?

Mr. SHEVLIN. What is the use of anticipating anything of that kind? There is nothing of that kind in existence now. A few years ago we were told what would be done by the trusts, but they were busted, and every one will bust that is not conducted on legitimate basis. I remember when the English people came to our city to buy up the flouring mills, and they said the people on the other side would own this country, and I said if any man 4,000 miles away can run this business better than I can when I am on the ground, all right. But they still continued to say, "We will own the flouring mills and the industrial institutions." I don't believe there will be any body of men in this country able to long monopolize anything, because the greatest monopoly is brains. When Mr. Rockefeller dies he can not bequeath his brains; his boy will be a Sabbath school teacher, and some other fellow will be the Rockefeller of the future. The greatest good fortune any young man can have is poverty, which will cause him to use his brains.

Senator NEWLANDS. Notwithstanding the fact that we have had laws against rebates and discriminations for twenty-five years, and have only been able to effectually check them within the past three years, you do not think that, so far as legislation is concerned, any extra vigilance is required to prevent the system of rebates and discriminations?

Mr. SHEVLIN. I do not. Conditions are changing all the time. Look at the Soo. Hill was bound that that should not be built by Gould. What happened? The Soo was built, and we find Gould going on and building another road from Denver over to the coast. Look at the transcontinental lines to-day. Twenty-five years ago if any man had said they would ever exist he would have been pronounced crazy. I think the country to-day is in its infancy. We shall ultimately have a population of 200,000,000.

Senator NEWLANDS. You do not believe in this kind of legislation, and, as I understand, you regard the passage of the Elkins law itself as a mistake?

Mr. SHEVLIN. No; I don't.

Senator NEWLANDS. Then you do believe in this kind of legislation?

Mr. SHEVLIN. Yes; there may come a time when wealth will become so great that we shall have to have legislation to protect the weak fellow from the strong. I don't think that time has come yet, because there never was a time in this country when there were such opportunities for every young man who wants to work and will behave himself. There is nothing so dangerous as success. Only a few men can stand prosperity.

Senator NEWLANDS. Upon the question of capitalization, do you think it is a wise thing to permit the capitalization by railway companies in excess of the money actually put in or in excess of the value of the property actually on hand?

Mr. SHEVLIN. I do not. I think a law should be made that when these people who organize great companies nearly all water, and exploit them and sell them to the public, that is a thing that ought to be stopped. That needs regulation far more than the railroads.

Senator NEWLANDS. You think if that is provided for regarding the railroads that will involve automatic regulation of the rates themselves?

Mr. SHEVLIN. I do.

Senator NEWLANDS. And you would prefer an automatic regulation of rates, as the result simply of guarding against excessive capitalization, rather than a direct regulation of rates by a governmental body?

Mr. SHEVLIN. I do not quite comprehend that question.

Senator NEWLANDS. Very well; let me explain it to you. Suppose a corporation spends $10,000,000 in a railroad, capitalizes at $20,000,000, puts the stock on the market at that rate, and gradually gets a place in the market. The effort of the railroad men will be to get a return on their $20,000,000 instead of on $10,000,000, will it not?

Mr. SHEVLIN. Yes, sir.

Senator NEWLANDS. And if that is successful it will mean the imposition of rates beyond what will be necessary to produce a fair return upon the $10,000,000.

Mr. SHEVLIN. Yes, sir.

Senator NEWLANDS. Then, if the capitalization is kept down by law to the actual amount of $10,000,000, will not that very fact automatically keep the freight rates down, instead of allowing them to be increased with a view to paying dividends upon watered capital?

Mr. SHEVLIN. It most assuredly will; and that is what I believe in.

Senator NEWLANDS. That is what I call automatic regulation. And you think that kind of regulation is not undesirable?

Mr. SHEVLIN. I think it would be wholesome.

The CHAIRMAN. We are very much obliged to you for your statement, Mr. Shevlin.

ADDITIONAL STATEMENT OF MR. OLIVER L. GARRISON.

The CHAIRMAN. I believe Mr. Garrison wishes to correct some figures in his statement. He can have that opportunity now.

Mr. GARRISON. Mr. Chairman, in my statement on the seventeenth day of the proceedings, top of page 54, Senator Newlands asked me a question, and, with the permission of the committee, I would like to correct my answer. My answer is not what it should be, due to the fact that I looked at the memorandum I had at the time and was mistaken as to the distance between Minneapolis and New Orleans. The question by Senator Newlands was this:

> What is your rate per ton to New Orleans?

My answer was:

> About $2 a ton to New Orleans.

I should have answered $1.50 a ton.

Senator FORAKER. What page?

Mr. GARRISON. Top of page 54 of the proceedings of the seventeenth day.

The next question was

> How many miles is that?

My answer was:

> About 800 miles.

It should have been 600. That is where I made my mistake as between Minneapolis and New Orleans. The next question was:

Is it a distance rate?

I thought I answered "yes;" the record says "no." I should have answered "yes."

Senator FORAKER. You have the privilege of correcting any error in your testimony.

Mr. GARRISON. I am going away this afternoon, and thought I had better correct it now.

STATEMENT OF MR. JOSEPH RAMSEY, JR.

The CHAIRMAN. Please state your name and occupation.

Mr. RAMSEY. My name is Joseph Ramsey, jr.; my occupation for over thirty-six years has been railroading; I am at present president of the Wabash, the Ann Arbor, and a few other smaller railroad companies.

The CHAIRMAN. Make such statement as you think proper on the question before the committee, what is generally called the "rate-making question."

Mr. RAMSEY. I have no doubt this committee is——

The CHAIRMAN. Before you proceed you may state your experience.

Mr. RAMSEY. Thirty-six years in railroading in all departments, and for the largest portion of the time, after, say, the first five years, I was directly connected, in a controlling way, with the traffic of almost all the roads I have been with; there were a few exceptions. I feel that I am at least moderately acquainted with traffic conditions and the conditions which go to make up and establish the rates of the country—not legal conditions; I mean competitive and other conditions.

The CHAIRMAN. Now proceed in your own way.

Mr. RAMSEY. Mr. Chairman and Senators, I hesitate to start in on any formal presentation of reasons why the Interstate Commerce Commission should not be given the rate-making power, as I know that this committee has heard reason piled upon reason, argument upon argument, formulated and presented by the most able and brainy legal, executive, traffic, and operative officials of the American railroads, and I feel that I can add but little more than my indorsement to most of the arguments made by these gentlemen.

The first thing a physician does before prescribing a remedy is to diagnose the case, and in no case will a wise physician think of applying an extreme or dangerous remedy except where there is an extreme and dangerous condition in the patient which justifies risking the life of the patient in order to take advantage of the single chance of saving it.

It is admitted by all, gentlemen, that the remedy proposed, giving to a commission the "rate-making power" over the traffic of 225,000 miles of railroads, the earnings of which amount to $2,000,000,000 per year, endangering vested interests amounting to over $13,000,000,000, and the successful operation of properties employing directly over 1,500,000 citizens, and supporting, through pay rolls,

dividends, fixed charges, and railway supplies, some fifteen million people, and serving—and serving well—a country of 80,000,000 people and a territory 4,000 miles east and west and 1,500 miles north and south—is an extreme remedy and a dangerous experiment; dangerous alike to the public (so disinterestedly represented by Mr. Bacon), to the railroads, and more especially to the future development of the industrial and commercial prosperity of the country at home and abroad.

Now, the remedy being extraordinary and extreme, what is the extraordinary condition of the patient which justifies this placing of it upon the operating table, chloroforming it, and removing, not that ornamental and useless thing, the appendix vermiform, but the heart and life's blood of the patient.

What are the conditions? Are the rates charged by the railroads of this country too high? Not a single advocate of these measures says so. Mr. Bacon even admits that a large portion of the traffic is carried at less than cost. The low rates made by American railroads are the surprise and wonder of foreign railroad men, averaging not more than one-third to one-half of the rates for similar services in other countries under government control and ownership. The foreign railroad officials who have studied this subject here credit these low rates to the sharp, intense competition between railroads having individual liberty of action and the desire to build up new territories, forcing the managers and heads of departments to an intensity of research, investigation, and development of economics in cost of service unheard of in countries where the railroads are owned or controlled by the government.

Even the Interstate Commerce Commission pays its compliments to the railroads. Its report for 1893 says:

> It is competition of product with product, of market with market, that has induced carriers, in their eagerness to increase the value of their traffic, to reduce continually their rates to market points.

It is true, gentlemen, that this report was prior to the beginning of the joint campaign of our friends Bacon and Moseley to secure the rate-making power for the Commission.

But we have only to refer to the statistics of the past years to prove the remarkable decrease in railroad rates.

Take the Wabash Railroad. Its statistics extend back to 1882. I attach a sheet showing the full statistics for the past twenty-three years:

Mileage statistics for twenty-two years of the Wabash Railroad Company.

	Miles road operated.	Earnings per mile.	Operating expenses per mile.	Net earnings per mile.	Tons freight carried.	Tons carried 1 mile.	Rate per ton per mile.	Expenses per ton per mile.	Net earnings per ton per mile.	Freight-train mileage.	Freight-train earnings per mile.	Freight-train expenses per mile.	Freight-train net earnings per mile.
Year—							*Cents.*	*Cents.*	*Cents.*				
1882	3,401.6	$4,954.05	$3,652.49	$1,301.56	5,911,012	1,247,611,320	0.951	0.694	0.257	8,599,680	$1.3800	$1.0070	$0.3730
1883	3,587.5	4,715.09	3,827.76	887.26	5,859,566	1,263,790,523	.948	.787	.161	9,486,967	1.2628	1.0479	.2149
1884	3,582.5	4,650.83	3,896.35	754.48	6,358,761	1,373,842,462	.857	.737	.120	9,612,370	1.2250	1.0533	.1717
1885	2,912.8	4,738.26	3,995.80	742.46	5,558,571	1,183,951,136	.802	.699	.103	7,726,106	1.2298	1.0716	.1582
1886	2,191.4	5,843.96	4,308.62	1,535.34	5,486,067	1,101,685,716	.818	.605	.213	6,210,422	1.4511	1.0730	.3781
1887	1,989.5	6,745.50	4,757.22	1,988.28	6,409,301	1,075,047,083	.855	.623	.232	5,767,140	1.5933	1.1615	.4318
1888	1,950.1	6,324.26	5,014.40	1,309.86	6,231,879	1,072,298,610	.750	.638	.112	5,958,518	1.3498	1.1486	.2012
Year ending June 30—													
1889	1,944.4	6,475.25	5,047.44	1,427.81	6,267,780	1,094,717,509	.756	.627	.129	6,102,092	1.3555	1.1241	.2314
1890	1,922.3	6,946.30	5,032.11	1,914.19	6,832,358	1,430,197,332	.647	.479	.168	7,286,032	1.2707	.9407	.3300
1891	1,922.9	6,775.33	4,974.37	1,800.96	6,256,064	1,209,179,055	.733	.563	.170	6,611,126	1.3403	1.0291	.3112
1892	1,916.8	7,506.95	5,651.36	1,855.59	6,928,051	1,390,510,161	.705	.554	.151	7,501,799	1.3065	1.0268	.2797
1893	1,880.0	7,524.04	5,718.31	1,805.73	7,036,387	1,409,033,492	.683	.550	.133	7,567,247	1.2709	1.0239	.2470
1894	1,935.4	6,485.20	5,079.25	1,405.95	5,414,994	1,097,585,279	.698	.607	.091	6,258,093	1.2235	1.0640	.1595
1895	1,935.4	6,179.52	4,609.40	1,570.12	5,811,557	1,100,976,202	.721	.560	.161	6,245,391	1.2702	.9865	.2837
1896	1,936.2	6,614.58	4,773.58	1,841.00	6,100,710	1,218,785,357	.696	.520	.176	6,313,782	1.3432	1.0036	.3396
1897	1,936.2	5,953.30	4,121.04	1,832.26	5,954,760	1,149,989,024	.661	.470	.191	5,402,191	1.4077	1.0000	.4077
1898	2,061.3	6,407.54	4,514.03	1,893.51	6,382,831	1,365,693,174	.624	.447	.177	6,306,504	1.3517	.9680	.3837
1899	2,277.7	6,319.52	4,571.05	1,748.47	6,987,641	1,666,830,054	.553	.421	.132	7,101,324	1.2973	.9887	.3086
1900	2,339.5	7,027.57	5,106.83	1,920.74	8,080,220	1,902,881,278	.558	.425	.133	7,075,158	1.5005	1.1431	.3574
1901	2,360.3	7,437.39	5,402.72	2,034.67	8,354,949	1,978,952,453	.564	.436	.128	6,981,266	1.5984	1.2369	.3615
1902	2,438.0	7,815.21	5,679.83	2,135.38	8,578,603	1,947,404,142	.604	.463	.141	6,841,121	1.7195	1.3178	.4017
1903	2,483.3	8,513.20	6,368.81	2,144.39	9,691,514	2,198,073,383	.606	.469	.137	7,284,158	1.8297	1.4159	.4138

Mileage statistics for twenty-two years of the Wabash Railroad Company—Continued.

	Average load per car.	Average freight-train load.	Number passengers carried.	Number passengers carried 1 mile.	Rate per passenger per mile.	Expenses per passenger per mile.	Net earnings per passenger per mile.	Passenger-train mileage.	Passenger-train earnings per mile.	Passenger-train expenses per mile.	Passenger-train net earnings per mile.	Average number of paying passengers per car.	Average number of paying passengers per train.
Year—	*Tons.*	*Tons.*			*Cents.*	*Cents.*	*Cents.*						
1882	9.68	145.07	4,251,393	166,198,560	2.373	1.804	0.569	4,942,209	$0.9770	$0.6060	$0.3710	11.10	33.60
1883	9.58	133.21	3,905,665	154,727,718	2.498	2.190	.308	4,866,465	1.0026	.6964	.3062	10.39	31.79
1884	10.12	142.92	4,046,577	154,700,993	2.366	2.251	.115	5,024,882	.9370	.6929	.2441	10.19	30.79
1885	10.36	153.24	3,180,644	138,274,372	2.314	2.247	.067	4,525,662	.9113	.6865	.2248	10.28	30.55
1886	10.80	177.39	2,726,166	131,005,562	2.186	2.120	.066	3,971,677	.9163	.6994	.2169	10.11	32.98
1887	11.01	186.41	2,802,036	143,762,871	2.212	1.923	.289	4,103,310	.9741	.6741	.3000	10.07	35.04
1888	10.94	179.96	3,073,231	157,146,634	2.096	1.867	.229	4,521,426	.8978	.6490	.2488	9.89	34.76
Year ending June 30—													
1889	11.08	179.40	3,059,772	152,404,045	2.150	1.939	.211	4,525,866	.8865	.6528	.2337	9.59	33.67
1890	12.15	196.29	3,115,604	149,183,008	2.130	1.890	.240	4,475,682	.8804	.6299	.2505	9.67	33.33
1891	11.51	182.90	3,416,076	149,904,203	2.178	1.842	.336	4,559,766	.8816	.6057	.2759	9.11	32.88
1892	12.09	185.36	3,826,749	170,201,067	2.057	1.839	.218	4,714,252	.9131	.6638	.2493	9.75	36.10
1893	12.28	186.20	3,934,916	177,119,065	2.009	1.727	.282	4,805,338	.9187	.6367	.2820	9.98	36.86
1894	11.94	175.39	3,724,674	210,281,487	1.877	1.508	.369	5,133,272	.9261	.6179	.3082	11.49	40.96
1895	12.26	176.29	3,404,771	139,472,829	2.146	1.979	.167	4,917,128	.7730	.5613	.2117	8.41	28.36
1896	12.67	193.04	3,542,042	158,966,979	2.038	1.828	.210	5,019,857	.8141	.5789	.2352	9.42	31.66
1897	12.86	212.87	3,149,170	135,963,860	2.087	1.895	.192	4,823,090	.7757	.5343	.2414	8.75	28.19
1898	12.99	216.55	3,517,682	180,359,167	1.957	1.774	.183	5,490,994	.8170	.5818	.2352	9.65	32.79
1899	14.83	255.12	3,751,019	210,592,939	1.897	1.610	.287	6,270,751	.7942	.5406	.2536	9.91	33.58
1900	16.07	291.02	4,277,735	233,848,065	1.913	1.650	.263	6,644,720	.8403	.5809	.2594	9.97	35.19
1901	16.67	309.00	4,943,016	264,268,214	1.885	1.558	.327	7,237,313	.8514	.5689	.2825	10.53	36.51
1902	16.69	316.38	5,109,302	322,708,490	1.791	1.497	.294	7,691,050	.9140	.6283	.2857	12.00	41.96
1903	17.82	331.29	5,948,913	330,111,942	1.859	1.667	.192	7,715,162	.9684	.7132	.2552	12.17	42.79

Senator NEWLANDS. Does that table give your capitalization and the issues of stocks and bonds?

Mr. RAMSEY. The table does not give that, but I will be glad to furnish that.

Senator NEWLANDS. Also gross and net income?

Mr. RAMSEY. I shall be glad, indeed, to furnish that. I will say, in passing, that the Wabash has not paid any dividends, nor even the charges to its debenture bondholders for some thirty years—twenty-five years, anyhow.

Senator KEAN. There is a dispute about that.

Mr. RAMSEY. Yes, sir. We are putting it all into the property. I will just give you a few figures:

The average rate per ton mile in 1882 was 9.51 mills, the cost per ton mile 6.94 mills. In 1895 the average rate received was 7.21 mills; cost, 5.60 mills. In 1900 the average rate received was 5.58 mills; cost, 4.25 mills. In 1903, rate, 6.06 mills; cost, 4.69 mills—a reduction of 3.45 mills, or 36 per cent, in rate and 2.25 mills, or 33 per cent, in cost. The Wabash carries coal 250 miles for 60 to 75 cents per ton. English railroads carry coal into London from 150 to 175 miles for $1.75 per ton. That was corroborated yesterday by Mr. Acworth. The lines of the Wabash being in both eastern and western territories, its average rates and reductions above shown are a fair average for other roads.

Well, admitting that rates are, as a rule, low enough, what about this great, great wrong, "discrimination between communities?" What communities? Our friends talk in glittering generalities about "the public," that may apply to any portion of our country, but "communities," that trouble ought to be something which can be specialized and located, so that the House surgeons need not amputate every limb, remove every vital organ, and leave the patient nothing but a corpse, to be placed in the hands of the undertaker, or receiver (the terms are synonymous), when the little wart or excrescence at some specified point or locality can be removed as easily as by the old woman's remedy for warts—take an old dirty dishcloth, rub it over the wart, and bury it (the cloth) under the rain spout, and as the cloth rots away the wart disappears.

The only specific cases cited by Mr. Bacon were a lumber case from the South of 2 cents per hundred pounds, the hay case, and some grain product—that is, flour cases. Gentlemen, can you call to mind any lumber king, owning thousands and thousands of acres of timber lands (and, in all probability, a logging railroad) who has gone into bankruptcy lately? Lumber rates are no higher now from any territory, and much lower from some than they were five and six years ago, and yet the railroads are paying from 25 to 40 per cent more for lumber to the same outraged individuals (or communities, as my friend, Bacon, would call them). Then there is that other community (of interests), the poor millers of Minneapolis and St. Paul. Bear in mind, gentlemen, that the thing wanted by these gentlemen is to prevent wheat and grain being exported at any preference in rates over flour. The rate itself would be of no benefit to the general public (as represented by Mr. Bacon), it would not save the consumer one cent per barrel. It is firmly believed by many well posted traffic men that to put flour on an exact parity with wheat

would be to force the wheat raisers of the West out of foreign markets and make them dependent upon the mills of Minneapolis and other domestic points for their market. But do not believe for a moment that the miller is not fully protected by the railroads; they are getting low rates and rates which are enabling them to increase their foreign markets from year to year. The railroads carrying traffic into Minneapolis and St. Paul from the West and out of those cities to the East are not going to lose a barrel of flour on account of rates being too high. They will make rates to meet any competitive conditions and hold the trade.

Is it then due to rebates and discriminations that the patient must be experimented upon?

Mr. Bacon (the public advocate and representative of a "convention," which, he admits, was organized to push along just such "drastic" legislation) says "the Elkins bill has done away with all rebates and rate violations." Then that is not the reason.

"But," says Mr. Bacon, "neither the Elkins bill nor the interstate-commerce bill gives the Commission any jurisdiction over anything except violations or cutting of the published tariffs; it can not do anything where the published rates are maintained, even if the rates are discriminatory as between communities." Mr. Bacon has not read these bills, or else he has forgotten much of importance in them.

The first paragraph of section 1 says charges must be "reasonable and just," and every unjust and unreasonable charge is prohibited and declared to be unlawful. Publishing a tariff does not make it "reasonable."

Section 3 says:

> It shall be unlawful to give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality (community) or any particular description of traffic, or to subject any particular person, company, firm, corporation, or locality or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatever.

Mr. Bacon also said that no shipper had any redress for unreasonable rates or discrimination if the rate had been published. If Mr. Bacon will turn to section 8 of the interstate-commerce bill he will find the following:

> That in case any common carrier, subject to the provisions of this act, shall do, cause to be done, or permit to be done any act, matter, or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with reasonable counsel or attorney's fees, to be fixed by the court in every case of recovery, which attorney's fees shall be taxed and collected as part of the costs in the case.

The liability is not restricted to simply the amount of the overcharge or excess rate charged, but he "shall receive the full amount of damages sustained in consequence of any such violation of the provisions of this act."

Suppose our friend who just spoke were bidding on a contract in Chicago, and the same railroad or the railroads he was doing business over had given him rates which cut him out of that market, and it was declared to be an unreasonable discrimination in the rates from his territory. Gentlemen, I believe he could recover the full

amount of his loss, under that contract, on account of that discrimination, because it says "any damages sustained."

Why, gentlemen, even his attorney need not be afraid to take the case; he also can hold the railroad company. The bill goes further than this. It requires the Commission to furnish the attorney, conduct the case, and to pay fees even to the complainant.

What more can be offered to secure full and unrestricted control of and protection from all these matters of discrimination complained of by Mr. Bacon and his associates?

But it is now urged that the Commission has tried to remedy these discriminations in rates and failed, because it has not the power to "fix a reasonable rate." It has failed because it has not proceeded as the law specifies. It has no right to fix a new rate, but it has the right, and it is its duty, to recommend "what reparation, if any, should be paid by the common carrier to any party who may have been injured," and these findings shall "be deemed prima facie evidence as to each and every fact found."

One would think, from the manner in which this rate legislation is being forced through Congress under the urgent demand of the President, that a great emergency exists, that some terrible evil is being done, and that any delay for consideration would result in untold disaster, and therefore it is better to do something at once, even if it does wrong the millions of people interested in railroads, than to permit—what? Gentlemen, other millions of people to be wronged? No; but "something" to continue which somebody says has worked or might work in favor of one shipper against another—namely, rebates and discrimination. Well, let us admit that "rebates and discriminations" are illegal; that they work a great wrong upon a large number of people; that they build up trusts and large concerns and break down independent and small manufacturers and weak concerns; that they are ruinous to the prosperity of the country (not that they are making the country poor as a whole, for these very rebates, cut rates, have been a large factor in enabling the surplus products, both farm and mill, to find a foreign market, but that the increased wealth is going to a favored few at the expense of the many); let us admit, nay, let us join in the condemnation of these practices, and even then, when we get our second wind and think instead of "shouting with the crowd," we must also admit that the remedy for these illegal acts is ready at hand, has been for years, and that no further legislation is needed to stop these rebates, or, if it is, the Esch-Townsend bill and similar legislation for the control of rates will not give the Commission any additional power than is conferred in the interstate-commerce laws as they now stand for the punishment of those who pay rebates or accept them.

When we consider that the Interstate Commerce Commission has been in existence for over seventeen years and in all those years it has never convicted or punished a single rate cutter, although it had ample power, and that the chairman of the Interstate Commerce Commission says that 90 per cent of the complaints laid before the Commission were rate discriminations, and that of all the rate cases they decided as unreasonable the courts held against the Commission and in favor of the railroads in all but two cases, it does not look as though the railroads are so outrageous in their rates as to require

such "drastic" legislation as the Esch-Townsend bill. Of course that bill has "popular support." So would a law to prohibit an unreasonable price of flour, of meat, or of anything else which the public, or a portion of it, has to pay for. Free lunches are always "popular."

In my opinion, the placing of the "rate-making" power in the hands of the Interstate Commerce Commission, or any special body or commission organized for that purpose, would be most detrimental to, if not destructive of, our present commercial and industrial prosperity.

"But," say the advocates of the Esch-Townsend bill and bills of similar nature, "we do not propose to give the rate-making power to the Commission, only the power to reduce a rate when, upon complaint, it is found by the Commission that the rate complained of is unfair. The railroads will have the right to make the rate, the Commission to revise it if, in the opinion of the Commission, it is unreasonable; but that is not the rate-making power." Can anyone be blinded by such play upon words? Does any advocate of this bill or of "control of rates" believe any such thing? If they do, we need only refer them to more than one decision of the Supreme Court, both in connection with the interstate law (1896 and 1897), on this very point of rate-making power, and also with regard to the Trans-Missouri Freight Association and the Northern Securities Case. The court says, "Where power is granted, we must assume it will be exercised. If it is not to be exercised, why grant it?"

Gentlemen of the committee, do you require any argument to offset such an absurd and unfair statement of the "rate-making" powers of the Commission under the proposed legislation? Do the trial courts of our land "make" our State and National laws, or do the courts of last resort, the National and State supreme courts? They are made by the court of final jurisdiction. Now, in a railroad rate case, under the Esch-Townsend bill, that would be the Interstate Commerce Commission, and the Commission would be, under some of the plans proposed, the plaintiff, the attorney for the plaintiff, the prosecuting attorney, the detective bureau, the grand jury, the trial court, and the court of final appeal. But these advocates of the Interstate Commerce Commission further says, "It (the Commission) can only act upon complaint." Such at first glance would seem to be the case; but even if it be true that a "complaint" is necessary, with the tremendous competition of community against community, of corporation against corporation, individual against individual, and all these forces allied against the railroads, with the natural desire of all of us to "get something for nothing" and the knowledge that it will cost the complainant nothing to make complaint, where his attorneys, witnesses, and court fees are provided by the Commission, and if he loses his case he is not out of pocket, while if he wins he gains all (a sure case of "heads I win, tails you lose")—with all these inducements can you doubt for a moment that there will be enough "complaints" to bring every tariff in the country before the Commission?

But, gentlemen, it does not require a complaint. The Interstate Commerce Commission has the right to investigate matters of discrimination of any kind of its own motion, and therefore it can take up and revise any rate without complaint.

But it is immaterial for the purposes of this hearing whether the power of the Commission under the proposed legislation is limited to revising a rate made by the railroad company complained of or it has the power to "make rates ab initio." When it would "revise" a rate for one railroad or between two points—say Kansas City and Galveston—it would just as certainly make new rates between every city in the Mississippi Valley, the Northwest, and the lake region—Chicago, St. Louis, Kansas City, Omaha, St. Paul, Minneapolis, Milwaukee, etc.,—and every Gulf and Atlantic port, as if it had issued a positive order putting these new rates into effect. This result was clearly shown in minute detail by Mr. Vining.

The committee has probably noted my use of the words "reduce a rate" and "reduced rates." I think this is a more correct description of the power proposed to be given than "revise" and that it is the only thing sought by the advocates of the bill, if their statement that the Commission is to revise only "upon complaint" is correct and made in good faith. Complaint will not be made of any rate being too low.

I do not propose to question the brain capacity, the ability, or the fairness of the Commission, or its intent to do justice to all concerned—public, shipper, and railroad—but there are some things beyond the human power of any half dozen men. Our Supreme Court is composed of nine of our most eminent and capable men, experienced through a lifetime of legal and judicial work, and yet that body is several years behind in its docket in simply deciding the law in cases tried before the lower courts. Suppose it had to take these cases from the very beginning and act as grand jury, trial court, appeal court, and, finally, to review its own decisions, where would we be and what sort of law would we have? And supposing, further, that these judges did not have to be "learned in the law," but for fear that their ideas would be improperly influenced by too much personal knowledge of the subject they must be selected from other professions—say lumber, grain, and commission men (I won't say railroad men, because we get so much law knocked into us, between State and interstate laws, that we are fairly good lawyers, if the court would only believe it)—where would the—what is it?—"paladium of our liberties" be then? No single body of men in this country, be they railroad men or men of the Commission, can make the rates for the entire country; while any one man on any railroad can reduce rates, and thereby upset temporarily the equilibrium of competitive conditions between sections, communities, and railroads.

The building up of the fabric of rates is of slow process and must be the work of many men, scattered all over the country and thoroughly familiar, not only with the local conditions and needs of his territory and line, but also thoroughly posted as to the exact effect the slightest change in his rates will have on other territory, communities, and railroads competitive with his own; because every railroad traffic official knows that he can not unduly build up his own territory or his own traffic at the expense of other territories, communities, or traffic of other roads, and yet every traffic official is extremely zealous and will go to the lowest limit of rate possible to develop his territory by encouraging industrial plants to locate along his lines, agriculturists to settle upon his untilled lands, mine operators to

develop the coal, ore, and other mineral lands. Railroads pay large salaries to men who have nothing to do but work to secure the data and information which will show the advantages and facilities of the towns along their roads for plants and works of all descriptions.

Under present methods interstate and export traffic is built up and fostered by low rates on the long haul; by competition between railroads in the same section and field; by competition between railroads in one section or field with railroads in other sections or fields; by competition between towns, ports, and sections; by railroads whose traffic may be heavy in one direction making low rates in the other direction to avoid hauling empty cars, just as vessels at times make very low rates to provide ballast. All these variations in rates to suit the varying conditions of trade and traffic can be made by the railroads, and legally made; but when the Commission, with the powers of the Federal Government delegated to it, steps in to make the rates, then it must be bound and circumscribed by the limitations of the Federal Government (and even the Federal Government has its limitations), and it can not make any rate which does not "yield a fair return" for the services rendered and property used. And when the Commission fixes a rate for one railroad for a certain haul or distance between two or more States, how can it discriminate and fix a different rate for another railroad or between other States for a similar service or distance? How can it fix a rate between Omaha and New York of, say, 13 cents, including lighterage, 11½ cents to Philadelphia, and 11 cents to Baltimore, with no lighterage deduction?

No commission would have the nerve or legal right to make as low rates as are frequently made by the railroads to defend what they consider their rights in one traffic territory or community, or to enable a large surplus crop to be exported, or to build up new territory along its lines. Any rate fixed by the Commission under the proposed or any other law must be "reasonable," and this means something more than cost of service, and no commission could force any railroad to carry traffic at a loss.

The Esch-Townsend bill makes it the duty of the Commission "to declare and order what shall be a 'just and reasonable' rate, practice, or regulation to be charged, imposed, or followed in the future," etc., "and the order of the Commission shall of its own force take effect and become operative thirty days after notice," subject to appeal, etc., and section 2 provides that any rate which may be fixed by the Commission "shall for all purposes be deemed the published rate of such carrier." Under the plain wording of this act, no other rate, even if lower than that fixed by the Commission, can legally be made by a railroad company, and a railroad company could not reduce a rate made by the Commission to meet competition from other railroads or territories except by a new order from the Commission. In short, competition between communities and ports would be entirely under the control of the Commission. And yet, the mere fact that the rate was fixed by the Commission would not make it any more difficult to secretly cut the rate than if it was made by the railroad traffic manager.

Mr. Bacon stated yesterday that we did carry a large amount of traffic at less than cost. That is absolutely true. The grain handled under that rate paid in some cases less than 1 mill per ton-mile. I know in one case we hauled grain 12½ miles for 1 cent.

Senator CULLOM. Did you lose money by doing that?

Mr. RAMSEY. We lost at least 1 cent, but that was to protect our patrons and shippers. The Wabash is known as a "Gould" line, and the Wabash met the low rate to haul East as against the low rate to Galveston by the Missouri Pacific, Iron Mountain, and other Gould lines. So that competition is the maker of the rate, and it is not made by a Gould road, Rockefeller road, or anybody else's road. It is the competition between communities, between ports, between business men, and the absolute necessity for the railroad to take care of its patrons and its traffic under any conditions, even if they have sometimes to go into the bankruptcy court for a few years.

Senator DOLLIVER. So that was really a competition between Gould and himself?

Mr. RAMSEY. No, sir; there were probably thirty other railroads interested. They were all at it. It was competition between ports and the great grain-producing territory of the central Mississippi Valley.

Senator DOLLIVER. I do not understand how mere competition against ports could put all those railroads in that attitude, the ports being absolutely dependent on the rates.

Mr. RAMSEY. That is true, but the shippers who handle the grain through Chicago and the eastern ports, if we let them go out of the business because rates are low, the next month or next year when rates are reasonable, then they are out of business as well as their patrons, and the railroads running east can not get that grain. We must maintain the parity between all ports; they must be protected; and the shippers to those ports must be protected by the railroads interested in that direct traffic and those ports.

Senator DOLLIVER. Rather than carry that freight at a loss, why do not the railroads resort to the very common expedient of agreeing upon a reasonable rate?

Mr. RAMSEY. We have the trans-Missouri case against us on that. We can not even get together and talk them over without it being illegal.

Senator DOLLIVER. We have had much talk to the effect that these men were getting together and talking.

Mr. RAMSEY. We are forced to. As I remarked to Senator Elkins yesterday, we are forced to apparently violate the law, by the very requirements of the interstate-commerce law, in this way: From Kansas City to New York, Baltimore, or Philadelphia the Wabash must have a rate common with every railroad it connects with. We must have a through rate with every one of those roads, or we can not do business. The Interstate Commerce law requires that business shall be shipped through to destination without breaking bulk. The Wabash has to meet every railroad with which it connects at its two or three hundred connecting points; it has to get a schedule of rates with those railroads which will permit a man in Omaha to ship over the Wabash to St. Louis, and then over any railroad out of St. Louis to the East or to any other local station on any of its roads. So we must meet and discuss and agree upon these rates. The Wabash officials must meet with the traffic officials of each road and discuss this business concerning its 2,500 miles of road. We are bound and required by the law to do this. We make a rate with the

Erie, the Lehigh Valley, the New York Central, the Pennsylvania, and all the other connecting, but at the same time competitive roads, to agree among them what their percentage of the rate shall be. That same percentage will apply to any other road out of Buffalo to New York; there is no difference; or to Boston, or to any point reached by them. How can we do that unless we get together and discuss these rates and agree upon them?

Senator CULLOM. You are violating the Sherman act more directly than you are the interstate-commerce act, are you not?

Mr. RAMSEY. The interstate-commerce act requires that we shall make these through rates. There is nothing in restraint of trade which is the requirement of the Sherman Act. Certainly it is no restraint of trade to say to a shipper in San Francisco, "Deliver your goods here on our line and we will deliver them in Liverpool or Boston or New York over all these other roads, and you need not bother about it." I remember when the gauges between Indiana and Ohio were different, so that freight had to be transshipped at the State line. That condition of things was brought about intentionally by the States, in order to give wages to the laborers of Indiana and Ohio at the State line in transferring freight from one car to another. How would that work from California to Boston to-day? I say we must meet together and agree on these through rates to which the Wabash is a party, and to which the New York Central, the Boston and Maine, and other roads are parties.

Senator DOLLIVER. Were these low rates from the Mississippi Valley points to the Gulf unprofitable?

Mr. RAMSEY. We all think they were.

Senator DOLLIVER. Then why did not these roads immediately fix the rate at a reasonable figure?

Mr. RAMSEY. That they could not do.

Senator DOLLIVER. The public has a general belief that they do that in many cases.

Mr. RAMSEY. They could not do that.

Senator DOLLIVER. Those rates seem to go down about the same time, and when the stress is over they return to normal level apparently in pursuance of some kind of agreement.

Mr. RAMSEY. One man or one railroad could reduce all the rates of the country by simply learning that there is a large body of grain that can be moved under certain conditions. He puts in a local rate, sometimes called a midnight tariff; but those rates are published and that grain will move; that particular 1,000,000 or 2,000,000 bushels of grain will go out to an Atlantic or Gulf port at that rate. Then, as soon as that rate becomes public, the other roads meet that rate; and if the rate continues going down then some line will put in what we call a drastic rate. You know what drastic legislation is. Some line will put in a drastic rate which will meet all conditions, and the roads carrying that traffic must protect their patrons and their interests. But the other roads soon get tired of carrying the traffic at extemely low rates, and then they go back to a rate which even Mr. Bacon says is not too high or unreasonable. Mr. Bacon says 25½ cents per 100 pounds on flour to New York is not an unreasonable rate, and I believe there is a 13-cent rate on corn. By the way, he discussed that yesterday as if it were wheat, but it was corn. He claimed that he ought to have the same rate on corn as on wheat.

Senator NEWLANDS. What was the wheat rate?

Mr. RAMSEY. That was the wheat rate, too, because the same rate that applies to corn applies to wheat—there may be a slight difference.

Mr. BIRD. A difference of 1 or 2 cents, I think.

Mr. RAMSEY. But there was no wheat moving at that time, because, as Mr. Bacon stated, the price was too high in this country just at that time.

Senator DOLLIVER. Do you regard a rate normally low, and which is uniformly stable throughout the season and from one year to another, as preferable, from the public standpoint, to this succession of abnormal reductions in rates?

Mr. RAMSEY. Do you mean a reasonable rate?

Senator DOLLIVER. I mean one that is reasonable, remunerative, and stable.

Mr. RAMSEY. That will move traffic and not oppress the shipper too much? I certainly believe that stable rates are far better for the development of the country as a whole than any unduly low rates that are put in temporarily and upset all the commercial and traffic conditions, because the railroads furnish an unusual amount of freight in a short time and then for a period of two or three months remain comparatively idle. I agree fully with the statement made by the gentleman from Minneapolis and St. Paul, who preceded me, as to the effect of extremely low rates.

The CHAIRMAN. Proceed with your statement.

Mr. RAMSEY. It is claimed that the railroads need not fear the action of the Interstate Commerce Commission in the event of it being given the power to fix the rate; that such power would be exercised by the Commission in a manner fair and reasonable to the railroads as well as to the general public. While I would not question the intention on the part of the Commission to be fair to both parties, I do question the ability of any man or set of men not trained and experienced in the work of making tariffs and securing traffic, to make rates which would be as fair to the railroads, the shippers, and communities as those made by the railroad men themselves.

Mr. Bacon says that any one can make rates; that it is not necessary that they be trained and experienced in this work, and that the Commission, in course of time, would accumulate experience which would enable it to make rates fair, reasonable, and just to all parties. I presume any set of men of good, average ability and education would accumulate experience during a number of years on the bench to make pretty fair judges and yet, as a rule, judges are selected from men trained and experienced in the law.

When the Government selects commissions for special duties, such as the construction of the Panama Canal and commissions of similar character, it selects men who have spent their lives in engineering and construction work. Why, then, should the revenues of properties running up into the billions in value and traffic questions affecting the interests of 80,000,000 people be put into the hands of a commission, from which it seems to be the intention to exclude men who have been trained in traffic matters?

Mr. Bacon referred to the ten years from 1887 to 1897, during which the Interstate Commerce Commission did make and establish some rates which the railroads accepted. He stated that during these ten years there were only 132 cases all told acted upon by the Commission, and gave this as a reason why the railroads should not fear that

the Commission would unduly exercise the rate-making power. This argument is just as strong against the necessity of giving this extraordinary power to the Commission as in favor of doing so. If but 13.2 cases per year developed during the ten years after the interstate-commerce law was passed and during which period there were numerous cases of rate cutting and discrimination in favor of or against individual shippers, why should it now be necessary to put the rate-making power in its hands, when, as it is admitted, all rebates and discriminations have been abolished?

If the present Commission was to take up these few questions, which would arise, say, on an average of 13.2 per year, and endeavor to handle them as an arbitrator friendly to both parties, as the English Board of Trade handles most of its complaints, I firmly believe that out of the 13.2 cases per year there would be few to adjust in the courts after the Commission had tried in a friendly way to adjust them.

I do not claim that the railroads are above reproach; I do not deny that they might need some regulation. Power to regulate "practices" and prevent discrimination is a very different thing from the power to make rates. The first should, if properly done, be beneficial to all lines by preventing some one line from indulging in preferential practices favorable to some large shipper, which forces a general lowering of rates on all lines or the adoption of the same practice at an increased cost to the company, while the rate-making power in the hands of the Commission will be damaging to all interests. The avowed object of this proposed power is to prevent discrimination. Why not punish the guilty railroad indulging in discrimination instead of including the innocent also? We have murder laws and men will commit murder, but no one has ever proposed to hang all men because some men commit murder.

"Railroads are throttling and restraining the commerce of the country?" Why, the railroad companies have done more work and spent more money to develop and increase the traffic and commerce of the country than any other separate interest—more than the Government itself. Time is too short to enter into extensive statistics to show the wonderful rise and development of the country in industrial and commercial lines and foreign trade, due almost entirely to the facilities furnished and rates made by the railroads, without any control by the Government of these rates, but it is necessary to give some condensed figures to show that the "popular outcry" that railroads are "throttling commerce" is not justified by facts.

In 1870 there were 250,000 manufacturing plants, with 2,000,000 employees; value of products, $4,125,000,000. To-day there are 650,000 plants, employing 5,500,000 people; value of products, $13,500,000,000.

In 1870 there were 53,000 miles of railroad; to-day, 212,000 miles.

Increase in number of industrial plants, 400,000, or 160 per cent.

Increase in number of employees, 3,500,000, or 175 per cent.

Increase in value of products, $9,375,000,000, or 225 per cent.

Increase in railroad mileage, 159,000 miles, or 300 per cent.

In 1885 our exports were $750,000,000; last year, $1,500,000,000, an increase of 100 per cent.

In 1885 agricultural products exported, $530,000,000; in 1904, $854,000,000, an increase of 60 per cent.

In 1885 manufactured products exported amounted to $147,000,000; in 1904, $452,000,000, an increase of 207 per cent.

We sent into Great Britain $538,000,000 of merchandise and took from her only $164,000,000. Great Britain added $374,000,000 to our wealth.

Iron and steel exported in 1885 amounted to $17,000,000; in 1904, $112,000,000. Nearly sevenfold.

In 1885 agricultural implements were exported to the value of $2,500,000; in 1904, $23,000,000. Increase ninefold.

Railroads are assailed as enemies of commerce and as committing outrages upon the public when they make through rates on export traffic—that is, through to destination in foreign countries—in doing which they may sometimes take a few cents less per ton than if the commodity was for domestic use at the port of sailing, while the manufacturer or shipper is lauded as building up our foreign trade if he, to meet foreign competition, sells for a less price than for home consumption, and the Government helps him by rebating tariff duties on exports, and yet, if the railroads did not make these through rates low enough the manufacturer would not be able to compete in the foreign market.

The President is most anxious for a navy, costing hundreds of millions to build and tens of millions per annum to maintain, for the protection of our foreign trade and interests, and yet no American railroad official can make a rate a few cents lower than the printed tariff to aid its patrons to secure that foreign trade without deserving condign punishment.

Mr. Bacon laid particular stress upon this export question yesterday, reading an editorial from a New York paper suggesting the prevention of any lower rate on export or import traffic than on domestic traffic to and from the same port of entry, and several questions were asked on that line. Such a course would be ruinous to the ports and to the export trade and directly contrary to the whole policy of the Government. Does not the Government itself encourage this export traffic by rebating all tariff charges on articles manufactured here and shipped abroad, while the domestic trade has to pay to the manufacturer not only the tariff charges paid by the manufacturer on all importations, but an equal amount on raw material or finished product which was not imported? If New York gets its flour on a fair or low rate—and Mr. Bacon says the domestic rates are not unreasonable or unfair—does it hurt New York if the railroads aid the farmers and millers of the West to find a market abroad in competition with foreign grains and flour? Does it not benefit New York as well as the farmers and millers by making New York a great port of shipment, and then, in exchange and in payment of these exported articles, make it a port of entry for all the numerous articles of luxury and necessity which we receive from foreign countries?

One would think, gentlemen, that such arguments should tend to cause your honorable committee to doubt, not the good intentions of the gentleman and those he represents, but their ability to grasp and fully consider the real interests of the country at large. They evidently view this question through the knot holes in their lumber and through the dusty haze of the flour mills.

Mr. Bacon seems to be fully advised upon but one subject, and that is the wish of the millers, namely, to have no grain exported, but to have it milled here, and that the farmers should have only the millers of Minneapolis, St. Paul, and a few other points for their customers. But Mr. Bacon was not able to show any real discrimination against the millers. He talked about a 13-cent rate on grain from Omaha to New York when for export, and of a 25.5-cent rate on flour and wheat for domestic use, but when asked to give the export rate on flour he could not state it. He admitted that the railroads had complied with the Commission's ruling that the difference should be 2 cents per 100 pounds, but did not know whether or not they were still complying with that ruling. I must claim, gentlemen, that he shows no condition existing, so far as he knows, which justifies the taking away of the control of rates from the railroads.

The truth of the 13-cent emergency rate referred to was that it was intended to cover corn shipments only, and that very little wheat was exported under it.

As to the lumber dealers' complaints, it was clearly evident that this was another case of competition between lumber districts, the Southwest, the Northwest, and the Southern fields, the common competitive points naturally being St. Louis, Kansas City, Omaha, Chicago, and territory within that quadrilateral; and the railroads from each field, being also competitive, gave rates to the common territory which were low enough to get a share of the business, but to local and noncompetitive points each railroad got a more reasonable rate. You will remember that neither Mr. Bacon nor Mr. Higbie claimed that the rates they complained of to these short-haul points were excessive or unreasonable, but simply that there was a lower rate to some other points forced, I do not hesitate to say, by conditions of competition from some other lumber territory or by a shorter railway line or water competition, giving that low rate, and not through any desire on the part of the road complained of to make the lower rate to one place than to the other.

Mr. Bacon is frank and fair; too much so to make a good advocate for his cause. He admits in every case cited that the rates are reasonable. He even suggests raising some of them—the 13-cent grain rate, for instance; but he gets back continually to the old chestnut that there are some cases of discrimination between communities, and for that and that alone he advocates taking the control of rates out of the hands of these men who make too low a rate, and yet, in the same breath, he says he would deprecate any law which would prevent railroads from reducing rates. Why, of course he would, and so would all his societies and conventions who want to catch the railroads "a' comin' and a' goin'." A mileage basis for rates, he says, would be absolutely destructive to commercial prosperity. So say we all; on this we can agree. He says that the control of rates in the Commission would not prevent railroads from reducing rates. Probably not, by direct enactment. But Mr. Bacon's own argument here disproves this statement. He has insisted that the flour rate be reduced or the grain rate increased. If the Commission had power, with all these 600 organizations working for their own profit, covering all the States and Territories, combined against a few railroads, where would the rate land? We have a clear and complete answer to this in a case now pending.

The Chicago Great Western Railway made a seven-year contract with the packers of Kansas City and other points for carrying cattle and hog products to Chicago at a very low rate. The other roads, while they could get but little, if any, of the contracted traffic, did have to protect their own patrons against this low rate. The result was that the Chicago Cattle Exchange made complaint that the railroads were discriminating against Chicago, and the Commission heard the case against 14 railroads and ordered that live stock and hogs be carried at the same rate as the products—dressed meats and packing-house products. The Commission admitted that the cattle rates were not in themselves unreasonable and that it was all due to the action of one road (practically an illegal act), but Chicago live-stock men were being discriminated against and the order was given. The roads declined to obey, and they are all now in the courts. If the Commission had now the power to "fix" rates, would the rate not have been put in at once?

With all these attempts of the Commission to reduce rates "upon complaint"—in no case has it ever suggested raising any rate, and the evidence on all hands, clearly shown by Mr. Bacon's own testimony, that a reduced rate for one community made by even one railroad brings demands on many railroads from other communities to reduce rates, failing which "complaint" is made—can anyone doubt that the rate-making or the rate-revising power (I do not care what it is called; it will "get there all the same") will cause the railroads to be very careful not to reduce rates of their own volition? Mr. Acworth's evidence of the effect in England was right to the point—that it had practically stopped all reductions in rates.

During the past ten years the Government has appropriated for improvements to rivers and harbors $165,000,000, an average of $16,500,000 per year, to furnish free highways for boats and vessels, and yet these very steamboat and vessel owners can charge what they please and pay all the rebates they wish, and are left entirely outside the control of the interstate-commerce law and Commission unless they happen to have a joint rate in with some railroad, while the railroads, carrying 95 per cent of the traffic of the country, receive nothing from the Government, are forced to maintain their own highways, compete with these free waterways, are hampered and harassed by State boards, commissions, and legislatures, taxed to the highest limit, forced to pay the very highest wage which combinations of their employees, in the shape of brotherhoods and unions (encouraged frequently by those high in political authority) can force upon them.

Senator DOLLIVER. Now, Mr. Ramsey—if the chairman will permit and it will not interrupt you—from all that I can learn the most vigorous and, I confess, to my mind the most reasonable, complaint in regard to the railway situation is the sacrifice of all intermediate points, each one of them anxious and desirous to extend its business, growing in population and wealth—the sacrifice of all these intermediate points to these competitive-rate conditions at great centers or at central markets. Is that situation, in your judgment, absolutely without remedy?

Mr. RAMSEY. I can not really admit such a situation. In all my railroad experience I know no situation where a railroad sacrifices

any point where it can get business and hold it for its own benefit and the benefit of its patrons.

Senator DOLLIVER. I do not mean to say that it charges an unreasonable rate; but it charges a rate so much higher than the rate at terminal market points that the discrimination operates to depress and discourage all these little communities scattered throughout the territory.

Mr. RAMSEY. Why should it, with that class of business?

Senator DOLLIVER. Take the lumber business, where the rates were less to Kansas City than they were to Wichita, and where the lumber was hauled right through Wichita.

Mr. RAMSEY. Wichita is a consumer, not a producer.

Senator NEWLANDS. It makes the freight on the lumber for the house cost more.

Senator DOLLIVER. It makes the lumber cheaper at Kansas City than at Wichita, although it was hauled right through Wichita to Kansas City.

Mr. RAMSEY. The man who raised that question said he did not complain of the rates to Wichita.

Senator DOLLIVER. But they were discriminative as regards Kansas City and Chicago.

Mr. RAMSEY. In what way were they discriminative? Did they prevent Wichita from using lumber?

Senator DOLLIVER. No; but they gave it to the people of Kansas City, Omaha, and Chicago at less prices.

Mr. RAMSEY. Correct.

Senator DOLLIVER. There is a prosperous little city, and ambitious, and that fact would naturally engender a great deal of complaint and irritation as fast as the people found it out, and I think that is the basis of nearly all the argument and discussion about discriminations.

Mr. RAMSEY. Two cents a hundred would be 50 cents per thousand, and a gentleman just stated that 25,000 feet of lumber was the average amount for a house. That would be $12.50 per house.

Senator DOLLIVER. If everybody would give me a cent I would not want any other income.

Mr. RAMSEY. But the Senator is interested in short-horned cattle, I believe?

Senator DOLLIVER. In a mild way.

Mr. RAMSEY. If he undertakes to sell those cattle in Chicago he is compelled to sell them in competition with Chicago rates. If he kills his cattle at home it makes no difference to him what the rate is in Chicago, does it?

Senator DOLLIVER. If you can convince all these little towns that it does not make any difference whether they have a higher rate or a lower one than other communities you would settle this whole agitation.

Mr. RAMSEY. I may not be able to convince some man, if he thinks he can get the lumber for $12.50 less, for it is human nature to want to get a lower rate than he is asked to pay. We are all striving to get things just as low as we can.

Senator NEWLANDS. You think there is no remedy, however, for that condition of things?

Mr. RAMSEY. I do not think the condition should be remedied.

Senator FORAKER. Is not this your contention, that Wichita has a reasonable rate?

Mr. RAMSEY. That is it exactly.

Senator FORAKER. And when you go on to Omaha or to Kansas City at a lower rate it is only because at those points you have competition?

Mr. RAMSEY. That was illustrated by Mr. Acworth yesterday, when, as he said, the Northwestern simply had to stop hauling and let the other roads continue to haul the freight at exactly the same rate; that it did not help the rate from Liverpool, but forced the Northwestern to go out of the traffic which would have helped that road to give a lower rate to Liverpool, if necessary. We can haul traffic in competition, and we frequently do, as I stated, at less than cost, or nearly so, in order to hold the traffic and our patrons in certain territory—Kansas City, for instance—but we do not like to do it. But the Supreme Court itself has in every case decided that where there are competitive conditions on a long haul the long and short haul clause does not apply. Kansas City is supposed to have water competition, and Congress every year or two pours a whole lot of money into the Missouri River, but I do not think anybody has seen a boat going up the river for a long time; certainly I have not.

The CHAIRMAN. I think you are mistaken, Mr. Ramsey, about Congress pouring money into the Missouri River.

Mr. RAMSEY. It has not in the last few years, but for years it did.

Senator NEWLANDS. If the Government owned all the railroads of the country, in adjusting rates there would be no such thing as a bigger price for a short haul than for a long haul, would there?

Mr. RAMSEY. No, sir. There would be no long haul.

Senator NEWLANDS. Your idea is that there would be a system——

Mr. RAMSEY. I mean that the illustration applied in the Liverpool and Northwestern case yesterday by Mr. Acworth would apply here. The railroads would hold the local business at the higher rate and go out of the long-haul business.

Senator KEAN. The local rates would be much higher than they are now?

Mr. RAMSEY. I think so. They certainly would not be any lower.

The CHAIRMAN. Proceed, Mr. Ramsey.

Mr. RAMSEY. Where will the Government stop in the march of railroad regulation and control? If it is to establish rates to be charged by the railroads for their services in the transportation of interstate commerce, will it not be necessary, as the next step, to say what shall be a fair rate to be charged by the employees of railroads for their services in the transportation of interstate traffic? These employees are engaged in interstate commerce, are protected by interstate-commerce laws, and at times are engaged in "restraint of trade," by combining together through their organizations to increase the charges of transporting and marketing it, and through these organizations they may make it impossible for railroads to transport traffic at the rates fixed by the Commission without loss. And then the next step will be to say to those coal and iron barons referred to so feelingly by a certain Congressman while he was arguing in favor of the Esch-Townsend bill, as being able by a word to "add $10 per ton to the price of steel and reap millions of ill-gotten spoils from the people," etc.—these barons are not able to do this

through their own combinations or on account of rebates received from the railroads, but because the Government is in "cahoots" with them, and says to the railroads, "If you buy from any foreign maker of rails, etc., you must pay us (the United States Government) about $8 per ton tariff"—the next step, I say, will be for the Government to say, "We will fix the price you may charge the railroads for their rails, coal, and other supplies." And so the onward march of "regulation" and governmental bureaucratic control of and interference with the business of the country will progress step by step until the bureaucratic oppression of the Russian Government will not be in it, and instead of being a free and independent people, claiming our birthright of equal laws for all and freedom to conduct our own affairs in our own way—so long as we do not infringe upon the same rights of our fellow-freemen or violate the common law of the land—we will be a people governed by special and class legislation, and ruled by the arbitrary, and sometimes despotic, heads of bureaus and departments. In the hands of honest, upright, and patriotic men such a condition would be bad enough; in the hands of corrupt or partisan and self-seeking men it would be ruinous to commercial development at least, if not to free government.

Mr. Higbie cited two cases of complaint, although he represents all the lumber dealers of a number of States. One of these the Commission decided and the railroads accepted the rate, which was not satisfactory by 2½ cents per 100 pounds to the dealers. The other case has never even been laid before the Commission.

Where is the great public which is clamoring for the rate-making power? Do you suppose, of the millions of shippers and thousands of communities interested in rates, if they were being treated in such an outrageously discriminatory manner as is intimated, that this town would hold the people who would flock here to be heard, pleading for redress and salvation of their interests? Would they leave this work to a few philanthropists and paid representatives of associations and some middlemen, whom the march of progress and the constant reduction and elimination of unnecessary expense between producer and consumer have left high and dry, just as all methods, machinery and even men are thrown into the "scrap heap" when better and more efficient methods, machinery, and men are discovered.

The committee took its usual recess.

AFTER RECESS.

STATEMENT OF MR. JOSEPH RAMSEY—Continued.

The CHAIRMAN. Mr. Ramsey, you referred to the middleman's charging $10 a car for getting freight or soliciting freight, and this leads me to ask you whether the man who solicits freight—the middleman, who gets pay for securing cars and getting business and so on—constitutes an abuse that Congress should remedy and which is not covered by the law in regard to rebates?

Mr. RAMSEY. You evidently misunderstood my reference to a middleman. I mean what are sometimes generally called "commission men."

The CHAIRMAN. You used the word "middleman."

Mr. RAMSEY. Yes. I mean the man who, for instance, takes grain or buys grain or handles stock at any large point like Milwaukee or Chicago on a commission basis. He is a negotiator or dealer between the producer and the markets or the purchasers. I did not mean it in any derogatory sense at all.

The CHAIRMAN. Is there anything connected with this soliciting of freight through freight solicitors or commissions paid directly or indirectly not covered by the bill and that should have the attention of the lawmaking power?

Mr. RAMSEY. I do not know of a single case of that kind or any commission agency of that kind. There used to be, of course, some of those things several years ago. I do not know of any now.

The CHAIRMAN. You do not know of any now?

Mr. RAMSEY. No, sir.

The CHAIRMAN. Mr. Ramsey, to narrow this question down. As I understand it, it is not proposed in any legislation nor by anyone to take from the railroad the power in the first instance to make the rates. All agree that the railroads should make rates; but in individual cases where rates are complained of as being extortionate or excessive it is urged that on a complaint the power should be given the Interstate Commerce Commission after inquiry to set aside the rate complained of and substitute a new rate, and that the railroads should be obliged to adopt this substituted rate and appeal to the courts. Please state briefly and explicitly your objections to this plan that I have stated. This is what the other side claim as against the railroad. They do not claim the right, and Mr. Bacon distinctly said yesterday, and so did Mr. Higbie, that they want to leave with the railroads the right to make the rates and the right to change rates. I have drawn your attention to this question, and would like you to state what would be the results if the plan or proposition advocated by Mr. Bacon and others should be carried out. Would it, in other words, invest the Commission with power, through changing or reducing one rate, to affect a great many other rates? What are the objections to the contention that they make, substantially and briefly?

Senator CLAPP. Just a moment. I think in justice to Mr. Ramsey it ought to be stated that Mr. Higbie's proposition and Mr. Bacon's proposition differ. Mr. Bacon's plan involves the idea that when a rate has once been established by the Commission it is still with the railroad company, if they feel that the conditions are changed, to initiate a change themselves, leaving that change, of course, subject to a challenge again by the Commission. Mr. Higbie differs from him in that respect.

The CHAIRMAN. Yes. Now you have the question and the contentions before you.

Mr. RAMSEY. I think I understand the question and the contentions. I refer to that in my brief pretty fully.

The CHAIRMAN. Yes; but I want you to make it plainer, if possible.

Mr. RAMSEY. All rates are made now. I do not know, and I doubt if any traffic man knows, of any commodity or any traffic from any section of the country to any other section that has not its rate made to-day. Therefore nobody to-day makes rates. They simply revise the rates and either reduce or advance them, as the necessities of the case may require.

Now, all of these rates having been once made and already made by the railroad companies, every one of these thousands and thousands of rates between thousands and thousands of stations at home and hundreds of consuming points abroad would be subject to this revising power of the Commission. Therefore the Commission will have the power under the Esch-Townsend law to make a new rate in every one of those cases if some one complains of it; and even if they do not complain of it, and the Commission thinks it is an unreasonable rate for any cause, the Commission can act without complaint; they have this power under the interstate-commerce law on which this law was based, because the Esch-Townsend law says "in conformity with the provisions of the interstate law" they shall do these things; therefore they would have the power to make the rates, whether you call it a revision or not. Probably the only question involved, then, is whether after having revised these rates or made new rates the railroad companies would then have the right to change that rate without authority of the Commission. The Esch-Townsend bill says that the rates so made or so stated by the Commission shall for all intents and purposes under this law be the rates of the railroad company.

The CHAIRMAN. Is it not sufficient, from their standpoint, that the railroads have the power to appeal immediately to the court and get relief?

Mr. RAMSEY. Well, as the gentleman stated this morning, we might have the right to appeal, but pending the decision on that appeal, which might take six months, one year, or two years, according to the crowded condition of the courts, we could certainly do no traffic under those conditions.

The CHAIRMAN. What would be the effect of this power to revise and make a new rate, a substituted rate, in the railroad world? Would it lead to a general fixing of rates or a disturbance and confusion, and so on?

Mr. RAMSEY. I think it would lead to the fixing of the present rates, or the rates which were made in the first place by the railroad companies, as a permanent rate except when changed by the Interstate Commerce Commission. In other words, no traffic manager of any road would dare, you might say, to quote a lower rate under some emergency or express conditions of traffic which required it, because that rate would at once be complained of by some other community or shipper, and, upon complaint, the Interstate Commerce Commission would do exactly as they have done in this Kansas City and Chicago cattle rate that I referred to this morning. They would immediately order the other railroads to reduce their rates, to meet the conditions and protect the Chicago people against the Kansas City people.

The CHAIRMAN. Would not the other railroads, if they were not parties to the suit or the complaint, have to lower their rates, or else the road that was compelled to lower its rate would get all the business?

Mr. RAMSEY. They would have to meet any rates. If the Commission takes up a rate on the Wabash road between St. Louis and Buffalo and says that that rate is unreasonable and therefore you should charge such and such a rate, every other railroad from New Orleans to the Lake ports would have to meet those conditions and

educe their rates on the same commodities or the same traffic proportionately.

The CHAIRMAN. I take it that the Commission would likely make all those railroads parties in the first instance, would they not, if complained of?

Mr. RAMSEY. They have done so in this Kansas City case. They have made fourteen roads parties.

The CHAIRMAN. Just approximately, how many rates would that affect? Say that it was complained of by one shipper or by the Interstate Commerce Commission, at the instance of the shipper, between New York and Chicago; that might affect how many rates?

Mr. RAMSEY. It depends so much on the conditions and the commodity.

The CHAIRMAN. Well, approximately. I want to get at how expensively this power may be exercised.

Mr. RAMSEY. There is, of course, a certain relation between all carriages of freight of one class and the products of that material, or whatever it is. It would affect all such rates.

The CHAIRMAN. Many hundreds or thousands?

Mr. RAMSEY. Of course it would affect rates on similar commodities and classes of freight via other roads that would not be called in the question, because it would affect the movement via the other gateways.

The CHAIRMAN. Would one decision affect hundreds and hundreds of rates, or a thousand rates, perhaps?

Mr. RAMSEY. On that commodity, it might affect every rate in the whole United States; and there is no point in the United States, practically, unless it is Spokane, that is not competitive—by railroad, I mean—with some other point.

The CHAIRMAN. How many published rates or tariffs are there in the United States, approximately? What is your judgment on that?

Mr. RAMSEY. There are thousands and thousands of them. I would not like to even guess at that, approximately.

The CHAIRMAN. I believe it is stated by Mr. Spencer that there were 2,700,000 last winter.

Mr. RAMSEY. He means rates. There may be one tariff sheet issued that will cover thousands of rates.

The CHAIRMAN. He said there were 2,700,000 rates.

Mr. RAMSEY. If you were to take the number of stations in the country and probably multiply them by each other—that is, multiply a hundred thousand stations by a hundred thousand stations—you would get up to about what the rates would be.

The CHAIRMAN. Out of these rates how many have been complained of as being excessive or extortionate during the last year, more or less, and taken before the Commission or the courts?

Mr. RAMSEY. I could not say as to the whole country, but taking the Wabash, which is, of course, interested in any question of rates affecting the transcontinental movements between the East and West, through the Mississippi Valley, and the central traffic territory, I can not remember now, but I think two citations appear on the ground of unreasonable rates, one of them being this cattle case, which has just come up. We are getting more citations now on account of safety appliance matters than anything else.

The CHAIRMAN. Have you any suggestions on that very subject of safety appliances; any remedies that in the interest of human life we could have adopted or provided for by legislation?

Mr. RAMSEY. I do not know of any more requirements than there are now to put on these safety appliances and keep them in order. Then, of course, there is the natural striving of the railroads to avoid accidents, to save life, and avoid the consequential damages to a heavy extent. Railroad men are human, and they have no desire to run risks or cause their patrons to run risks more than are absolutely essential. I do believe, however, gentlemen, that the best legislation in the way of providing safety applinaces will be to permit the railroads to receive such a return for their business and their traffic as will leave them a few dollars to put in in the improvements of their facilities, say, of heavier rails, of building steel and stone structures and cement ones to replace wooden structures, and providing all those facilities which the country ought to have. There is not a railroad to-day in the country hardly that has got the facilities necessary to promptly and properly handle its traffic. I was very much impressed by what Mr. Acworth said the other day. I think he said it here in regard to the comparison of the facilities of English roads for traffic and transportation with American roads where they had 2½ miles of terminal tracks and facilities to each mile of road, while the American roads had a half a mile. Railroads must have a surplus. They must either keep that surplus away from their stockholders and their bondholders or else they must have a surplus each year in order to put into their property and furnish these facilities.

The interstate safety-appliance act alone cost the railroads of this country millions and millions of dollars to put it on the old equipment. The Wabash alone paid over $450,000 on old equipment that was practically obsolete and since has been thrown away, in putting on safety appliances—couplers and air brakes. If the railroads were permitted, like other interests in this country, to earn a little more than the cost of their service, and a little more than 3 per cent return to their stockholders, and put it back into the property, the public could well afford to pay, say, 10 per cent more on the average rate and get 50 per cent more safety, greater convenience, and prompt movement of their traffic. The railroads have more complaints to-day of delays in the movement of traffic and the furnishing of cars and getting the business through than they have in regard to rates. That is a constant trouble and a constant demand.

The CHAIRMAN. The railroads depend for their prosperity, as a general rule, upon the prosperity of the territory and localities that they reach, do they not?

Mr. RAMSEY. Absolutely so.

The CHAIRMAN. And do you believe railroads, for this reason, this selfish reason, this mutuality of interest, can be depended upon not to oppress any business interest on lines they reach, or oppress any localities?

Mr. RAMSEY. They have got to serve the business interests in their locality fairly and reasonably well, keep them in the market with some profit to the business interests, or else they go out of business and the railroad company loses the traffic.

The CHAIRMAN. And therefore, generally, it is impossible for rail-

roads to oppress the localities, stations, and the territory that they occupy and reach?

Mr. RAMSEY. It is not altogether impossible.

The CHAIRMAN. Generally, I say?

Mr. RAMSEY. But it is improbable that any business man would do so. And right on that point, Senator, a railroad prefers to carry and handle its own local traffic always in preference to the through traffic, because on its local traffic it secures a much better return than it does on the through traffic; and therefore, when cars are short, every railroad declines to send its cars off to get the traffic from some other road and to haul through until its own patrons are served. In other words, its own interest is directly on its own line.

The CHAIRMAN. What brings on all these contests between localities, then, and communities, if you please, situated on different lines?

Mr. RAMSEY. Well, I could only answer that by saying that it is accounted for by the same principle that brings contests between two men trying to get the same contract or two drummers trying to sell the same goods. It is the competition natural to trade and commerce.

The CHAIRMAN. How can this contest be best settled, and by whom?

Mr. RAMSEY. By direct dealings between the railroads interested in protecting a certain territory and traffic and the people in that territory and traffic, directly—brought in touch with each other.

The CHAIRMAN. What governs the traffic manager in making rates? Is he at liberty and has he the power to make any rate that comes into his mind, arbitrarily?

Mr. RAMSEY. Oh, I suppose the traffic manager of a road could name any rate that he desires to name; but he would not remain traffic manager of the road very long.

The CHAIRMAN. What controls the traffic manager in making the rate?

Mr. RAMSEY. That which controls the traffic manager in making the rate is, first, the requirement of his road and his territory in competition with all other rates and all other territories. As a rule, his decision on those matters is influenced, if not entirely affected, by the reports, the suggestions, and recommendations that he receives from the local representative in the district affected directly, in the first place. We have our local representatives, for instance, at Kansas City, Omaha, and Des Moines, Chicago, and all points in which the Wabash is interested as far east as Boston. We have our man there, a high-class man, with nothing to do but look after the traffic from that territory to the West. We have another one in San Francisco, and we have them all over the country. They keep the traffic manager fully advised of the conditions in their territory, and they are, as a rule, a bear on rates, just like the traveling man who is trying to sell goods or secure a contract for his house is a bear on prices. He sees the other competitors around all the time, waiting to get in their arguments, and he gets scared, and says: "We must do so and so." The local traffic representatives, station agents and all, are generally anxious to secure the traffic from their territory. Their reputation is based on the amount of business that they get. They do not care much what business the company gets from some other territory, if their business falls off. So they are generally the first incentive to a change in rates.

The CHAIRMAN. And the next factor is what?

Mr. RAMSEY. The next factor is, of course, that the matter is brought to the attention of the traffic manager. He calls in his men from other points that might be affected by this rate and finds out what the other railroads are doing, and, if he can, exactly what business they are carrying, and if it is taking away the business unduly from the section or the territory which desires the protection, then they usually get the protection.

The CHAIRMAN. Then it is business conditions, as I understand you to say, that fix the rates, rather than the traffic managers?

Mr. RAMSEY. Business and competitive conditions fix the rates.

The CHAIRMAN. Business conditions?

Mr. RAMSEY. Business conditions always fix the rates.

The CHAIRMAN. If a road reaching one locality makes a rate lower than that made to another locality reached by another line, then there must be some sort of adjustment, or else the line with the lower rate would get the business; that is, that community would get the business as against the other community?

Mr. RAMSEY. Yes, sir; and then, besides the people themselves interested in the community, the boards of trade, the commercial bodies or associations representing some particular class, like lumber men or milling men or flour men or grain men, make their claims, of course, on the railroads. They call their attention to the fact that they are losing their business; that it is going some other way, and that they are not on a parity with the general trend of trade; that they are shut out; and then they get consideration, and if they can show that they are losing the traffic they will get relief ninety-nine times out of a hundred.

The CHAIRMAN. You stated that sometimes the through rate is very low, possibly below the cost of carrying, did you not?

Mr. RAMSEY. Yes, sir.

The CHAIRMAN. And oftentimes, while a little above the cost of carrying, that the through rates to competitive points are very low?

Mr. RAMSEY. Yes.

The CHAIRMAN. And that the railroads take this business so as to increase the volume of business?

Mr. RAMSEY. So as to protect their traffic.

The CHAIRMAN. And their localities?

Mr. RAMSEY. And their localities. They very rarely take business below what they figure the cost simply to protect the volume.

The CHAIRMAN. But now if railroads should be obliged, or should themselves lower the local rates to the intermediate points to equalize the rates to through competitive points, could they live; could they exist; could they have any net revenue, under those circumstances?

Mr. RAMSEY. Not unless they raised the whole fabric of rates.

The CHAIRMAN. Then they would have to raise the through rate the same?

Mr. RAMSEY. Yes, sir.

The CHAIRMAN. But if they lowered the rates to these intermediate towns, referred to by Senator Dolliver, to the ordinary through rate, the competitive rate, then the railroad could not live, as I understand, because it must get a reasonable rate somewhere?

Mr. RAMSEY. Yes, sir; it must get returns on its traffic which will

pay the fixed charges. It is not necessary to pay dividends on stock; a railroad can live without that, although I do not know how the stockholders might view it.

The CHAIRMAN. But the railroad must meet its fixed charges and interest?

Mr. RAMSEY. So far as its bonds are concerned, it must pay the fixed charges or be retired by being put in the hands of a receiver and having its property sold out and a new organization effected.

The CHAIRMAN. Do not these low through rates to competitive points enable the farmer and producer to get surplus wheat, corn, and other products to market when it would not be possible otherwise?

Mr. RAMSEY. Yes, sir; that is all that gets them through.

The CHAIRMAN. That is the case?

Mr. RAMSEY. Yes, sir; that is all that gets them through.

The CHAIRMAN. Another question: You referred to competition from localities in the same group or combination of railroads; for instance, we will say the Missouri Pacific has the Wabash on this side, and it, the Missouri Pacific System, goes to the south on the other——

Mr. RAMSEY. Not the Missouri Pacific system, but the Gould system; the Gould interests are largely in control of the lines east, and they also control the lines west.

The CHAIRMAN. The Gould interests, then, we will say. Is it not a fact that there is sharp competition between these very lines, on account of the interests of localities?

Mr. RAMSEY. It is absolutely as sharp between them as between the Wabash and the Alton or the Wabash and the Burlington.

The CHAIRMAN. Would that very fact prevent any combination of railroads putting up the price so as to make, if that were possible, the hauling of freight impossible to producers—making the rate so high that they could not sell?

Mr. RAMSEY. There is no possible chance, in my opinion, for railroads to combine together to raise rates to competitive points. There are so many competitive routes and so many competitive interests that it would be absolutely impossible to fix by agreement, in my opinion, unreasonable rates to points in the Mississippi and Missouri valleys and that territory that would stand if they were unreasonable.

The CHAIRMAN. Does your line own any refrigerator cars? Does the Wabash own them?

Mr. RAMSEY. We are interested in the American Refrigerator Transit Company.

The CHAIRMAN. You are stockholders?

Mr. RAMSEY. The Wabash is a stockholder. The Missouri Pacific, the Wabash, and the Iron Mountain a number of years ago put their refrigerator cars into what was called the American Refrigerator Transit Company, in which no single man has any interest. It is purely a cooperative refrigerator car company; the Wabash owning a lot of the cars, the Missouri Pacific owning a lot of the cars, and the Iron Mountain owning a lot of the cars. We have no refrigerator cars of our own. It would not pay us to keep them ourselves, and it would not pay any road, unless it had enormous traffic of certain kinds, to run its own refrigerator cars.

The CHAIRMAN. By reason of this ownership among these systems, is there any preference given to shippers?

Mr. RAMSEY. None whatever, that I know of. There can not be. The rates are absolutely the same.

The CHAIRMAN. The railroads make the rate?

Mr. RAMSEY. We make the rates. Mr. Bird and his subordinates make those rates the same as they do the railroad rates. That is identically the same, Senator, as if the railroads themselves, the Wabash itself, owned those cars.

The CHAIRMAN. But a great many complaints about abuses and evils growing out of the private car line have been——

Mr. RAMSEY. These are not private cars.

The CHAIRMAN. I mean by the term private cars to include refrigerator cars, to include all. There are 65,000 of them in the country.

Mr. RAMSEY. No; there is a great difference between the refrigerator car owned by the railroad and one owned by a private car line.

The CHAIRMAN. They group them all together, I believe?

Mr. RAMSEY. They sometimes group the good with the bad, I know. We are all tarred by the company we keep, once in a while.

The CHAIRMAN. Do you, from your standpoint, think it in the interests of the public to provide that the refrigerator-car owners and the systems and corporations controlling them, should be subject to the provisions of the interstate-commerce law?

Mr. RAMSEY. Any person engaged in interstate traffic ought to be under the interstate laws, or any vehicle engaged in interstate traffic, just as much so as the railroads. Boats engaged in interstate traffic ought to be under the interstate laws, but they are not. The Government has paid $165,000,000 in the last ten years to provide good rivers and good harbors for vessels. They have paid that money out for that purpose, and they have paid nothing for railroads, and still they say to these vessels, "You can cut the rate just as much as you want to, and pay all the rebates you want to. The interstate law has nothing to do with you."

The CHAIRMAN. You think, then, that through joint rates, by land and water, should be subject to the same law as governs the regulation of railroads?

Mr. RAMSEY. You mean rates in the United States?

The CHAIRMAN. Yes, sir.

Mr. RAMSEY. Yes; and they are. The minute a railroad——

The CHAIRMAN. No; you said a while ago that the Government did not regulate the water rates.

Mr. RAMSEY. The Government does not regulate freight carried on a boat. But, as I understand it, if a railroad puts in a joint rate with some boat company the boat company is so contaminated by the wicked influence of the railroad company that then it comes under the interstate-commerce law. It has become associated with a criminal, and therefore it is a criminal itself. They can take business from St. Louis to New Orleans at any rate they want to——

The CHAIRMAN. But if it is a through rate?

Mr. RAMSEY. If there is a railroad that delivers the freight to it at St. Louis, and joins in the rate, then they can not pay a rebate.

The CHAIRMAN. But it was the purpose of Senator Cullom, when he drafted his law, to include that.

Mr. RAMSEY. It is not included, I believe.

The CHAIRMAN. Yes; in the first section, is it not?

Mr. RAMSEY. Joint through rates?

Senator CULLOM. Made by rail and by water. They are included in the law.

The CHAIRMAN. But it is not enforced now. Would you suggest, Mr. Ramsey, a provision that these carriers by water, when they have a joint through rate with the carriers by land, be subject to the interstate-commerce law?

Mr. RAMSEY. They should be, whether they have a joint through rate or a rate of their own. Take, for instance, Pittsburg and the Gulf. Take freight going from Pittsburg to Cincinnati. There is a great cry, "On to the Gulf!" and the Government will undoubtedly put millions of dollars into that work and into that territory. The railroad rate on coal and rails and things of that kind from Pittsburg to St. Louis, Pittsburg to Cincinnati, Pittsburg to any point on the river, will be affected by the river rate; but the river man can give to the steel company any rate they want to, private or otherwise, and the interstate-commerce law pays no attention to it.

The CHAIRMAN. Would you advise that they be brought under the interstate-commerce law?

Mr. RAMSEY. They should be; undoubtedly. There is no difference between the carriage of traffic on land and carrying it on the water, and there is a greater reason why the Government should do that, because the Government furnishes a free highway and keeps it up, takes out all the snags, and says to the railroads: "Even if you want to cross this highway, which may carry 1,000 tons of freight a year, you have got to go away up in the air." We have got to go to Congress and get permission to build a bridge, and we must go away up in the air at an enormous expense. Take the Wabash road going into Pittsburg, and we are held up to-day in crossing from Pittsburg to the Allegheny side to reach all those industries by a refusal of the Government to permit us to cross below 70 feet above the water, although immediately below us and immediately above us there are bridges—one 800 feet from us and the other 1,500 feet below us—two bridges that are 40 feet above the water, but we must go 70 feet above the water. That means that we can not get down into Allegheny to reach any of those industries.

The CHAIRMAN. For these and other reasons you think that the carriers in the coastwise, lake, and river transportation should be subject to the same rules and regulations, so far as may be, that the railroads are?

Mr. RAMSEY. There is no reason whatever why it should not be done, and there are many reasons why it should be.

The CHAIRMAN. This resolution under which we are acting directs our attention to the injuries or accidents on railroads and the holding of railroads responsible for injury done by one servant to another—what is known as the "fellow-servant's liability" or "employees' liabilities." Have you given that subject any particular thought?

Mr. RAMSEY. Of course that confronts us in all the States. It confronts us every day in lawsuits and one thing and another. The law should require railroads to use every device possible within reasonable conditions to save their employees as well as their patrons, but

at the same time it should not go to such an extent as would encourage carelessness on the part of its employees. The safety of the lives and limbs of the passengers is not due so much to the officials of the road, who sit in their offices or ride over the road, as it is to the men on the road, and anything which tends to lower the standard of care and experience of the men tends to increase greatly the risk to the traveling public. The enforcement of the safety-appliance act has done more, in my opinion, to reduce the character of the service received from the employees than anything else that has occurred outside of labor unions in the last fifteen years. The old railroad employee, who had to save his own life when he went between the cars to couple them, was very careful about it, and they got skilled and experienced. It was the same way when they went out on the train on the road. They rode their train and they watched for everything. Now, with the automatic coupler it is "Kick her off, boys; let her go." And away she goes down the yards, and the first thing you know there is a crash and some man working back of some other cars is killed. Out on the road they run at all sorts of speed, because, they say, "We have the air brake, and if anything goes wrong we will stop her." But when they come to use the air brake they find, maybe, that there is something wrong, and they do not get the train stopped and a bad accident occurs.

I would not, for a moment, be understood as saying that those things should be taken off. I am only speaking of the fact as resulting from it, that it does tend to put in place of skilled labor, an unskilled labor.

Senator CULLOM. Mr. Ramsey, you say you do not mean to be understood as discouraging putting those appliances on?

Mr. RAMSEY. No, sir.

Senator CULLOM. Well, what is the result of their being put on? Has it resulted in more accidents, or has it saved life?

Mr. RAMSEY. I have just stated that it has resulted in a slackening up in the skill of the men and the carefulness of the men engaged on the trains, in my opinion.

Senator CULLOM. I understand you to say that, but what is the result, in the aggregate, as to the saving of life or the prevention of injury to persons employed?

Mr. RAMSEY. I think the result has been beneficial.

Senator CULLOM. And if you exercise a little more care with your men you would reduce the amount of trouble still more, would you not?

Mr. RAMSEY. Correct.

Senator CULLOM. So that, altogether, while these appliances are proper to be put on, yet if the men are allowed to run loose and do as they please, and neglect their duty, of course accidents will happen?

Mr. RAMSEY. I agree with you fully; and that is the reason I say that you should carefully consider before passing any legislation which would tend further to make the men less careful, not only as to themselves, because I think a man will always be careful as to his own life and limb, but less careful concerning others. This fellow-servant law, as I understand it, proposes that if one man is injured through the negligence and carelessness of the man he is working with, that the railroad company shall be responsible for the whole

thing. That tends to take away a very great restraining influence over the men who are working together. Of course, if a man is injured through the carelessness of the company, through defective appliances, or machinery, or material, or anything of that kind, the company ought to foot the bill, but where it is due to mere carelessness as between man and man, any further legislation would tend to still further increase that danger.

Senator CULLOM. I understand that point, and I think there is a good deal of truth in it. But at the same time we want to go on and as appliances are discovered that will be of advantage to the people or employees of the roads in saving their lives and limbs we ought to apply them as far as the railroads can within reason, as you say, and then get the best service that you can out of the men. That is the only way you can do in this world.

Mr. RAMSEY. That is true, Senator. Of course, without any law, any railroad company that wishes to hold its traffic and handle its business has got to continue on the march of improvement, no matter how poor it is, because its wealthier neighbors and competitors, like the Pennsylvania Railroad Company, and the New York Central Railroad Company, those companies that have millions to put in improvements, force their poorer competitors to do the very same thing. The Wabash, for instance, during the past seven years, has spent $12,250,000 out of its earnings, because it has no other means of raising money, in improvement of its property, new equipment, new cars, vestibuling, block signaling, and heavy rails in place of light rails, and all during that time it has not paid a cent to any stockholder or debenture holders. That shows that the railroads must, from their own desire to live, improve and use all these appliances, even when they are not forced by the laws to do so.

Senator CULLOM. But do you not think that the little bit of prodding by legislation and the Commission has been of service in getting these appliances put in earlier than they would have been otherwise?

Mr. RAMSEY. The automatic coupler was adopted by the railroads long before the interstate-commerce safety-appliance act was passed. Long before that the railroads were introducing them quite rapidly. While there may have been some pushing up by the law, I firmly believe that the couplers would have been in use on all railroads pretty nearly as soon as they were by the law. The law helped. There is no doubt that it forced some railroads to make provisions for it, and enabled the managers of the roads to say to their owners: "We have got to do this now, because it is the law." I know a good many managers of railroads, and I do not know one of them that is not always desirous of putting the property in the very best condition possible; and they are always glad of something that will enable them to go to the directors and say: "We have got to do this." That helps, of course. But they want these improvements; they want block signals; they want double tracks; they want heavy rails, and so on. But as long as we have got to grow gradually, and probably grow more slowly after this rate-making power is given to somebody else——

Senator CULLOM. You do not know what effect that might have. It might promote greater prosperity, and you might be able to pay dividends some of these days on your road, perhaps.

Mr. RAMSEY. That might be so. I firmly believe, and I have always said, that so far as the railroads are concerned they would make more money on the same traffic under governmental rate making than they would under their own rate making; but the question is, How long would that traffic be there? In other words, what effect would it have on the general traffic of the country and its prosperity? But no commission would make to-day as low rates as the railroads make, nine times out of ten, unless they absolutely went against the law, which says that the rate must be reasonable.

Senator CULLOM. In my judgment a maximum rate for the whole country would be simply worthless——

Mr. RAMSEY. Correct.

Senator CULLOM (continuing). To the people or the railroads, either.

Mr. RAMSEY. And a mileage rate would be, as Mr. Bacon said, absolutely destructive.

Senator CULLOM. I wanted to ask your attention to this: You have said and others have said that you carry a great deal of property for less than it costs you. Have you ever thought of the proposition as to whether you have a right to do that, as between patrons, carrying one man's goods for nothing, you may say, and charging his neighbor a pretty stiff rate, perhaps? Have you ever thought of the question as to whether you had a right to do that at all?

Mr. RAMSEY. Yes; I have thought of that question, and sometimes I think we have not. Sometimes I think that the shipper or grain raiser in one State would have the right to object to a low rate from some farther Western State, carrying the grain into his territory and damaging him, by bringing it in and making him probably take a less price; but there is a law greater, it seems to me, than statute laws, except in crime, and that is the law of commerce and the law of trade.

Senator CULLOM. Years ago, when this question was first being considered by Congress, I remember that a good deal of the testimony was to the effect that the common carrier had no right to carry goods at less than cost for one locality and charge another the usual tariff.

Mr. RAMSEY. Well, I think in cases like that it is no hardship, really, to the one who pays the higher tariff, if it is a reasonable rate. If they are hauling for somebody else for less than cost, and not making that good by an unreasonable rate on the other shipper, they are simply taking the money out of the pockets of the stockholders, where it would go as dividends. But of course if in order to carry one class of traffic for less than cost they advance the rates unreasonably on another class of traffic, to make them good, then they are working a hardship on the second class of traffic and not treating it properly.

Senator CULLOM. As to the present interstate-commerce law, until it was construed by the courts differently, I think its promoters thought they were so framing it as that you should not haul freight on a given railroad and in any given direction and charge more for a shorter distance than for a longer; that is to say, to give an illustration: That you would have no right, under the law, to carry freight from New York to San Francisco and charge less for it than you were

charging from New York to Salt Lake. But under the construction of the courts they do as they please about that, I believe.

Mr. RAMSEY. The interstate-commerce law says "under similar conditions and circumstances."

Senator CULLOM. "Under similar circumstances and conditions."

Mr. RAMSEY. Yes. And that is a very elastic provision.

Senator CULLOM. Yes; I know that. It was put in in the Senate.

Mr. RAMSEY. The Senate is broad-minded, always.

Senator CULLOM. You think that there ought to be no law that would prohibit a common carrier from charging more for a shorter than for a longer distance in the same direction and on the same road, do you?

Mr. RAMSEY. I think there should be no such law.

Senator CULLOM. The railroad should be left to do as it pleases?

Mr. RAMSEY. Unless they pass a law at the same time that a man shall not sell goods any lower in a foreign or competitive market than he will sell them in a local market, where there is no competition. The two are identically similar. Take this case of Kansas City and the lumber rate, and Wichita. Kansas City is a great grain center. In the case of lumber going to Kansas City, while the rate would be forced down, probably, by the competitive conditions on the lumber from other points, the railroads taking that lumber into Kansas City from the South would have return loading at once, of grain or other commodity, right down to the Gulf ports; while if they took the lumber into Wichita they would probably have to haul the empty cars then over to Kansas City for loading, or to Omaha or to some other grain center. So that the conditions outside of competition frequently justify low rates to carry the surplus to other markets.

Senator, if you will permit me, I will illustrate it by the rail question: Railroads in this country pay $28 at the mill for rails. The same maker will sell those rails to the Wabash for use in Canada at $20 to $21, provided they are used in Canada. We dare not use them in the United States. Now, we say to the makers of the rails, "We can buy English rails, delivered on these shores, at $20 a ton." Then Uncle Sam steps in and says, "Yes; you can do that, but if you buy those rails you will have to pay to Uncle Sam $8 a ton tariff on them." On lumber there is a $2 tariff rate, and that, Senator Dolliver, would add $75 to your house in Kansas or Iowa, four times as much as the railroad rate will. The tariff duties on steel and all these things force the railroad to pay to the makers of steel these high rates. Why does Uncle Sam do that? Why did they do it originally? To promote industry and commerce. And that is why they should permit the railroads to make low rates on traffic going abroad and low rates between various communities on the long haul, to do the very same thing. The Government pays a bonus in one case. In the other case they do not.

Senator CULLOM. I am not arguing the tariff question to-day.

Mr. RAMSEY. Neither am I. I am in favor of the tariff, and so are all railroad men, because while they pay $10 a ton more for their rails they probably get 10 tons more traffic by paying that and keeping up other industries. We do not object to paying a slight difference of that kind if we can get the traffic.

Senator CULLOM. You are not arguing the tariff question, but you

are giving an illustration, and we are getting your views on the question.

Mr. RAMSEY. Yes, sir.

Senator CULLOM. Now, as I understand you, your chief objection to any proposed legislation is as against the power of the Commission to make rates?

Mr. RAMSEY. Yes, sir.

Senator CULLOM. Do you have any objection to anything that is now the law with reference to controlling the interstate-commerce traffic of railroads?

Mr. RAMSEY. No; I do not know of anything objectionable in the interstate-commerce law and the Elkins law, except, as I say, that it does not go quite far enough. It does not bring in all methods of transportation and all those interested in transportation. It should bring in private car lines; it should bring in the boat lines, and all of them.

The CHAIRMAN. And foreign lines—the Canadian and the Mexican lines, as far as it can?

Mr. RAMSEY. That is a question of international law that I would not like to discuss. They hurt us, more or less.

Senator KEAN. Speaking of foreign lines, you operate part of a foreign line, do you not?

Mr. RAMSEY. We operate jointly with the Canadian Pacific from Chicago.

Senator KEAN. And also the Grand Trunk?

Mr. RAMSEY. And also the Grand Trunk. We also operate through Canada ourselves.

Senator KEAN. Does the Wabash take the road through Canada?

Mr. RAMSEY. It does along the line of a portion of the Grand Trunk road between Detroit and Buffalo, with interstate, State, and international business.

Senator KEAN. Mr. Ramsey, you called the attention of the committee to section 8 of the original act, which has been on the statute books since 1887. That appears to be a pretty drastic sort of a section. Have any proceedings ever been taken under that section?

Mr. RAMSEY. I have never heard of a single case in which any question of damages to the complainant was ever brought before the Interstate Commerce Commission. I never heard of any case in which any complainants said that they were damaged, but only that somebody else had a better rate.

Senator KEAN. Do you know of any other section of the interstate-commerce law under which no action has ever been taken?

Mr. RAMSEY. I have never known anybody to be punished under it; not a single case.

Senator KEAN. There seems to be a good deal of statute here.

Mr. RAMSEY. There is a good deal of statute there, and it is a thoroughly powerful statute.

Senator KEAN. It seems to be so, when you read it.

Mr. RAMSEY. In fact, one of the eminent gentlemen employed in a certain noted western case just at present—the Santa Fe and Colorado case—when I asked him the question the other day whether he considered that law, after getting into the case, powerful enough to reach any question of discrimination or unreasonable rate, said, "If

there is any law on the statute books of the United States that carries within itself ample power to enforce every provision of it, it is the interstate-commerce law."

Senator CULLOM. As it was originally passed?

Mr. RAMSEY. And with its amendments.

Senator KEAN. The Cullom law, supplemented by the Elkins law?

Mr. RAMSEY. I think it was powerful enough before the Elkins law provided for immediate action in the way of injunctions and restraining orders. But I am not a lawyer.

Senator KEAN. The only thing that is not in it is a silk dress for the Interstate Commerce Commission?

Mr. RAMSEY. I would not like to express any opinion of that kind. Between the two of them, the interstate-commerce law and the anti-trust law, I think they have got us in pretty close circumstances, where we have to be good.

Senator CLAPP. Mr. Ramsey, to bring this matter to a more definite form, you have no complaint of any of the provisions that exist to-day in the interstate-commerce law and its amendments, have you?

Mr. RAMSEY. I do not know of any, if the law is enforced reasonably and properly.

Senator CLAPP. I am speaking of the statute itself.

Mr. RAMSEY. I know of nothing in the statute.

Senator CLAPP. Of course you understand that under that statute if a rate is complained of and the Interstate Commerce Commission investigates that complaint and finds that the rate is unreasonable, it may then order a discontinuance of that rate?

Mr. RAMSEY. I do not so understand it. Its remedy is to order reparation to the party or community damaged by that rate. That is under section 8.

Senator CLAPP. Under these provisions——

Mr. RAMSEY. It may order the discontinuance of any violation of the law.

Senator CLAPP. It may order discontinuance of any rate which it finds unreasonable?

Mr. RAMSEY. Yes.

Senator CLAPP. The carrier must then abate that rate, or, failing to do so, an action is brought in court to enforce the order discontinuing that rate, is it not, under the law?

Mr. RAMSEY. That has been the process, I believe.

Senator CLAPP. That is the process provided for by the law. And if a report on that hearing sustains the order of the Commission the carrier must then abandon the rate that has been so condemned?

Mr. RAMSEY. Yes.

Senator CLAPP. When that rate is abandoned the carrier, of course, as a practical matter, must substitute some other rate, must he not?

Mr. RAMSEY. Necessarily so, if the rate is abolished.

Senator CLAPP. In substituting that other rate, unless the carrier makes a substantial reduction the Commission could again challenge the substituted rate if it saw fit, so that practically has it not been the practice in the main that where the carrier has either accepted the decision of the Commission, or that decision has been ultimately confirmed by the court, the carrier has made a substantial reduction? I think either Mr. Morawetz or Mr. Hines stated that

where they had complied with the order condemning the rate they had, except in very rare instances, substituted the rate suggested by the Commissioners. Is that your experience or observation?

Mr. RAMSEY. Yes; I think that is a pretty fair statement of the fact—that they either declined to put in the rate or accepted the rate; that is, declined to put in a new rate, or if they put in a new rate accepted the rate, and it is in evidence here from the other side that in almost all cases the railroad company did accept the rate made by the Commission.

Senator CLAPP. I think since 1897, in all but two cases where the action of the Commission has finally been sustained, either by acceptance on the part of the carrier or confirmation by the courts, the carrier has put in the rate suggested by the Commission. Now, that exercise of power by the Commission during late years has been in the light of the decisions of the Supreme Court holding that where there were two rates—one between local points and one between competitive points—competition did in fact exist. That exempted it from the prohibition against making the charge for the short haul more than the charge for the long haul.

Mr. RAMSEY. Yes.

Senator CLAPP. And I think it is settled now, you will agree, under the law, that the fact of the rates between the competitive points being lower than rates between local points is not to be taken in itself as proof that the local rate is an unreasonable rate. Now, taking as an illustration a rate that at present is $1 on any commodity for any distance. The Commission examine into that and condemn that rate, and suggest that 80 cents be put in place of it. The railroad either in the first instance accepts the condemnation or the case goes to court, and if the court sustains the Commission, then it must accept the condemnation. Now, knowing that the Commission can attack any substituted rate, the practical experience has been that the carrier, when finally obliged to recognize the condemnation, puts into effect the rate suggested by the Commission. If the result of that is to reduce the rate to 80 cents, does it not follow that all the rates that are correlated to that rate are affected, just the same as though in the place of the Commission suggesting 80 cents and the carrier adopting it the Commission had the power to say 80 cents with the same force legally with which it condemned the dollar rate?

Mr. RAMSEY. I suppose the result would be the same, with this difference, however——

Senator CLAPP. That is what we want.

Mr. RAMSEY. That if a man is found guilty on ex parte evidence before a grand jury he desires to reserve all his rights, clear up to the last court of appeal, and although he may be hanged, and ultimately the result is the same, still he has had all his rights as a citizen to the protection of the laws.

Senator CLAPP. Yes; but he is finally hanged.

Mr. RAMSEY. He is finally hanged very frequently, but not always, because when he gets before a jury there are a good many chances.

Senator CLAPP. But if he is hanged the results on his anatomy and physical existence are precisely the same.

Mr. RAMSEY. That is true. He has all those chances of not being hanged which the law gives him; but if he is, the result would be the same.

Senator CLAPP. And the result would be the same whether that reduction of rate was made simply by a process of forcing down the rate or by a direct order made with the same legal effect as the order condemning the original rate.

Mr. RAMSEY. That is true. If you get to a place, it does not make much difference which way you go there.

Senator CLAPP. Now, under the existing law the Commission can condemn this rate, and if it is sustained by the court and fixed, or accepted by the carrier, it brings all these collateral conditions in its train, does it not?

Mr. RAMSEY. Yes; if it goes through and is finally decided against the railroads it brings all the collateral conditions.

Senator CLAPP. So that unless the Commission would be inspired to increased activity all the argument that goes to the fact that correlated rates are affected by the reduction of one rate applies with equal force under the law as it is now as it would apply if the Commission had this authority to suggest the reduction with the same legal effect that it suggests the abandonment of an existing rate, does it not?

Mr. RAMSEY. It certainly does. No matter who makes the rate finally, whether it is made by the railroad company, by the court of last resort, or by the Commission itself, it would affect in the same manner any other rate correlated with it.

Senator CLAPP. Well, now, in your experience and capacity would you concede that the power which the Commission has at the present time is a wise one? That is, would you concede the broad principle as wise governmental policy of the regulation of rates at all?

Mr. RAMSEY. Do you mean the regulation of rates by permitting the Commission to name the rates?

Senator CLAPP. No, I am not speaking of that now.

Mr. RAMSEY. As to reasonableness and so on?

Senator CLAPP. No, as to the broad principle of the Government attempting in any manner to regulate rates.

Mr. RAMSEY. Why, they do now, under the interstate-commerce law.

Senator CLAPP. I know, but would you concede that as a wise governmental policy; reserving, of course, your objection to the details as to power and administration?

Mr. RAMSEY. I do not think any railroad man, including myself, objects to proper regulation of the conditions governing the transportation of the country, as to any matter connected with it, as to reasonableness of service and rates, and so on. We have been practically accustomed to that for several years.

Senator CLAPP. Of course, regulation must include, if it means anything, the ultimate power not perhaps to say in the first instance what a rate shall be, but to condemn with legal effect an existing rate.

Mr. RAMSEY. I suppose you mean condemn it as unreasonable.

Senator CLAPP. Yes, certainly.

Mr. RAMSEY. I presume so.

Senator CLAPP. Now, that being established, the number of rates that the Commission may directly act upon—I am not speaking now of correlated rates, but the number of cases which the Commission may directly act upon and affect if sustained by the courts—and the

modification of rates would be the same, whether it is brought about by the present process or by an authority to name a substituted rate, limited in either case to the capacity of the Commission to reach cases in view of the limitation of time, would it not?

Mr. RAMSEY. I presume the result would be the same. If a man was in jail, although there was no legal right for him to be there, he would be in jail all the same.

Senator CLAPP. Now, if the law was so changed as simply to give to the Commission's suggestions of the substituted rate the same legal effect which it now gives to its condemnation of the existing rate, leaving the long and short haul clause as it is, the governmental policy as outlined by the interstate-commerce law and sustained by the courts would remain the same, would it not?

Mr. RAMSEY. Do you mean it would remain the same even after giving the Commission the power to name the reasonable rate?

Senator CLAPP. Yes; leaving the long and short haul clause in the statute as it is construed by the courts, as it has been, merely adding to the law that the suggestion of the Commission as to the substituted rate should have the same force legally as its condemnation of the existing rate, would not disturb the long and short haul clause as it has been construed by the courts, would it?

Mr. RAMSEY. It would certainly put the rate into effect, subject to those restrictions as to the long and short haul clause, and the policy of the Government as to general regulation might be the same, but the effect would be very different.

Senator CLAPP. Well, if the law in itself reserves the rule that the exception to the long and short haul clause should be where there was actual competition?

Mr. RAMSEY. Yes.

Senator CLAPP. Please explain how.

Mr. RAMSEY. The Interstate Commerce Commission could not make any rate as between communities, because that is a competitive rate, and that is the competition which affects the long and short haul clause. Therefore any change in rates made between communities or districts would naturally bring in new conditions which would affect and change the long and short haul clause to a certain extent. The long haul would be affected undoubtedly.

Senator CLAPP. Well, but if the law still provided, as it now provides, that the long and short haul clause shall not apply where the conditions are dissimilar it would be the same rule, would it not?

Mr. RAMSEY. I can not so understand it, Senator. Supposing, for instance, that a rate is complained of, as in this cattle case, between Kansas City and Chicago. Those are two competitive points.

Senator CLAPP. Yes.

Mr. RAMSEY. They are competitive north and south, east and west. They are competitive to the Gulf ports, they are competitive to the Atlantic coast, they are competitive by the Lakes and water lines from Chicago. Now, supposing the Commission had the power in this cattle case referred to to name the rate at once instead of doing what it did do. That rate would affect the rate on all cattle and hogs and like products in Kansas City and Chicago; therefore between Kansas City and St. Louis, and Kansas City and the East, and Kansas City and the Gulf. Now, of course that is the long-haul rate, as we would call it—that is, the competitive rate.

Senator CLAPP. Yes.

Mr. RAMSEY. Now, we no sooner put in this low rate between these competitive points than short-haul points come in and say, "You have put in a rate now from Kansas City to Chicago, or Kansas City and the East, which leaves our rate out of co-relation to your other rates, therefore we must have a reduced rate on our business from, we will say Moberly, which is competitive on our line, with another rate to the East, to Chicago, to the Gulf, and to every place else." You see, you can not affect the present equilibrium, which is based on the long-haul rate. We may talk about very low rates on the long haul, but you can not give a low rate on the long haul without in a very short time reducing the short-haul rate, because if you make it so much cheaper from Kansas City or from Chicago to the seaboard than it is from Fort Wayne, this side of Chicago, to the seaboard, why then the trade is going to flow toward Chicago from Fort Wayne or Toledo instead of eastward, and you can not reduce to any extent any other rate without at once bringing about a demand from these other shippers. You can not reduce a rate on long hauls without affecting to some extent short-haul rates.

Senator CLAPP. Yes; but it does seem to me you could not have understood my question. My question did not go to the effect of reducing the long haul. What I meant to be understood was that if the law simply added to the Commission the power to suggest the substituted rate with the same legal effect that it now condemns an existing rate, and if it left the long and short haul clause standing, interpreted as it is by the courts, the haul to competitive points could still be maintained.

Mr. RAMSEY. The haul to competitive points would certainly be the rate that the Commission would change, would it not——

Senator CLAPP. Could they change it unless either they or the courts found it to be unreasonable? Now, the Supreme Court have said that the mere fact that it is higher than the local rate does not make it unreasonable.

Mr. RAMSEY. That is true.

Senator CLAPP. Now, I say, maintaining that law, maintaining the long and short haul clause as it is, as construed by the courts, which places it above the power of the Commission to-day as to competitive points, why, clearly, the long and short haul conditions would not be changed at all by simply adding this power to the Commission.

Mr. RAMSEY. The long and short haul clause is not out of their jurisdiction to-day. The Commission have just as much jurisdiction over the question as to what is a reasonable rate between Chicago and New York as they have between intermediate points and New York.

Senator CLAPP. Absolutely. That is what I am getting at.

Mr. RAMSEY. Now, a great many of the complaints made to the Commission are of competitive rates, or practically so. Supposing, therefore, that the Commission has the question brought before it in regard to rates between Chicago and New York or Chicago and Baltimore. Suppose the Commission decides that the rate is too high, that it is unreasonable.

Senator CLAPP. The Commission can do that now.

Mr. RAMSEY. The long haul. Therefore, they decide it is unreasonable and they put in a lower rate between Chicago and New York. That would be the long-haul rate which would be affected. Now, if

they change that rate to any appreciable degree it changes a whole lot of rates on the short-haul business.

Senator CLAPP. Can they not do that now, provided the court sustains it?

Mr. RAMSEY. Of course they could do it.

Senator CLAPP. They could do it no more if we left this short and long haul clause in the law than they could do it now.

Mr. RAMSEY. Yes, they could. They could do it every day.

Senator CLAPP. Can they not do it every day now?

Mr. RAMSEY. No, sir.

Senator CLAPP. If they find it unreasonable?

Mr. RAMSEY. They are not apt to do that, when they have to go to court and produce their evidence to show that this rate is unreasonable. The court and the Commission do not always agree on that.

Senator CLAPP. You have certainly misunderstood me. I do not mean to abandon the courts or to take away the right of appeal. I said leaving the courts and the right of appeal and simply changing the law in this one respect, that the suggestion of the Commission as to the modified rate should have the same legal effect that its order now has in condemning an existing rate.

Mr. RAMSEY. Then if it has the legal effect immediately, why go to the courts?

Senator CLAPP. Not immediately at all.

Mr. RAMSEY. I understand your question, I think, Senator.

Senator CLAPP. I do not think you do, Mr. Ramsey, because you keep bringing in the question of the courts. Under the law now the Commission, if the carrier does not accept the order, brings a suit.

Mr. RAMSEY. I understand that.

Senator CLAPP. Now, you leave that just as it is, do not change it at all, but simply add to this law a provision which gives to the order of the Commission suggesting the modified rate the same legal effect that it has now under the law to condemn the existing rate, still subject to the decision of the court all the time.

Mr. RAMSEY. One moment, so that I may understand it. Do you mean that the order of the Commission shall have the same legal effect as if the court had already sustained it?

Senator CLAPP. Oh, no; not at all. I am trying, Mr. Ramsey, to make that plain.

Senator NEWLANDS. You would still have the right to go to the court for a decision.

Senator CLAPP. It would have the same legal effect that the order of the Commission now has as to the right to condemn an existing rate, still subject, of course, to the review of the court. Now, that being true, it would follow as a natural consequence that the effect on the long haul would be similar to what it is now. If we retain the long and short haul clause in the law, as it is interpreted now by the courts, the only difference there could be would be the renewed or perhaps the increased activity of the Commission. Is not that so?

Mr. RAMSEY. The order of the Commission does not become effective until sustained by the court.

Senator CLAPP. No more than it does now.

Mr. RAMSEY. The Commission orders its rates to be put into effect. We say no. Of course, if we accept it it becomes the legal rate; but if we decline, then it goes into court.

Senator CLAPP. Yes.

Mr. RAMSEY. In this other case we would have to go into court.

Senator CLAPP. Oh, no; they would take you into court just as they do now.

Mr. RAMSEY. Then I see no difference whatever. I am sorry to have been so long in getting at your meaning. I thought you meant it was to take immediate effect.

Senator CLAPP. Oh, no. Now, a good deal of complaint has been made here that if the Commission was vested with the power to suggest the substituted rate, with the same legal effect that it now condemns the existing rate, it would destroy the elasticity with which rates might be changed to meet varying conditions. If the law also provided that when a rate had been changed by the Commission, and the conditions, in the opinion of the carrier, had so changed as to warrant another rate, the carrier could make that other rate without going to the Commission, but subject, like its original rate, to review by the Commission, all the time subject again to review by the courts, it would preserve its elasticity as fully as it is now, would it not?

Mr. RAMSEY. I should think so, because it will be identically the same process that is now provided in the interstate-commerce law.

Senator CLAPP. And the one single difference would be that now the suggestion of the Commission as to the modified rate is a mere suggestion, whereas under the proposed change that I have outlined that suggestion would have the same force as the order condemning an existing rate.

Mr. RAMSEY. They condemn the existing rate to-day, Senator.

Senator CLAPP. I know they do.

Mr. RAMSEY. And they order us to put in another rate.

Senator CLAPP. Yes; but that order has not the legal force to-day which the order condemning the existing rate has.

Mr. RAMSEY. It has no legal force.

Senator CLAPP. No.

Mr. RAMSEY. Unless they go into court and their order is sustained by the court; then it has a legal effect.

Senator CLAPP. As it is now the court will not enforce the suggestion of a new rate. The court will only enforce the order in so far as it condemns the existing rate. The suggestion of the Commission that an 80-cent rate be substituted for the dollar rate thus condemned is a mere suggestion at present under the law.

Senator NEWLANDS. The court does not act upon it.

Senator CLAPP. The court does not act upon that.

Mr. RAMSEY. Under the decisions the Interstate Commerce Commission have no power to enforce a rate.

Senator CLAPP. No.

Mr. RAMSEY. They have a right, however, to enforce such a penalty as if the railroad company has been charging an unreasonable rate it will change the rate rather than face the penalty. That is the reparation to the shipper.

Senator CLAPP. Then it would follow, as a logical sequence, that practically all the conditions which would attach to the rate fixed definitely in the first instance by the Commission at 80 cents would follow if the Commission condemns the dollar rate and the railroad

adopts the 80-cent rate, in conformity with the suggestion of the Commission.

Mr. RAMSEY. Yes; it would make all those changes along the line.

Senator CLAPP. One further question. You use the cars of private car companies on your lines, do you not?

Mr. RAMSEY. We run the cars of any private car company over our line.

Senator CLAPP. On those cars that are owned by the private car companies the icing is done by the car company, is it not?

Mr. RAMSEY. The car company furnishes and pays for the ice and makes its charges.

Senator CLAPP. Makes its own charge for that?

Mr. RAMSEY. Yes.

Senator CLAPP. Now, in your own furnishing of ice, do you calculate in the charge for ice to accomplish anything more than fairly and substantially to remunerate yourselves for the cost?

Mr. RAMSEY. Where we furnish ice from our icing stations we very rarely remunerate ourselves for the cost.

Senator CLAPP. You do not maintain that as a business proposition?

Mr. RAMSEY. No.

Senator CLAPP. Now, what is your judgment or opinion, based on your observation, as to whether the icing charge made by these independent, or what we call private, car companies is done and made with the view of making that in itself a profitable matter, independent of their rental of the car?

Mr. RAMSEY. I could not say anything about what their icing charges are, because I have no knowledge whatever of what they charge for the ice. We have no contracts with any of those companies, and where we furnish ice along our line I think our charge is $2.50 per ton delivered in the car. Now, I do not know what the companies that furnish their own ice charge for it.

Senator CLAPP. I believe that is all.

Mr. RAMSEY. One moment, while you are on that private car matter. We do not object to paying the private car rates for their cars, usually three-quarters of a cent, in some places a cent per mile. It is cheaper and better for us to do that than to attempt to furnish cars for that special class of service. Of course, they make considerable mileage, but they require special service, they require special care, special provisions for sanitation and keeping the cars clean, and there are very few railroads that object to any great extent to the charge per mile for the car. Of course, it is more than it would cost to run an ordinary railroad car.

Senator CLAPP. The complaint seems to be that where these cars are owned by private companies the icing charge is excessive, and the icing is done as a matter of profit over and above the rental of the car.

Mr. RAMSEY. I have no doubt they get some profit out of their ice.

The CHAIRMAN. Mr. Ramsey, should not railroad companies be required to confine themselves solely to their charter powers and not engage in any other business than that of transportation of freight and passengers, especially in competition with producers on their own lines?

Mr. RAMSEY. I agree with that policy fully, Senator.

The CHAIRMAN. Fully?

Mr. RAMSEY. I agree with that policy fully. It is the correct policy, but conditions sometimes force other policies. A railroad company should be a mere machine for transportation.

The CHAIRMAN. Would any conditions authorize a departure from that?

Mr. RAMSEY. Yes; sometimes they do.

The CHAIRMAN. What conditions? Please state them.

Mr. RAMSEY. Well, for instance, railroads engaged in the transportation of coal are very frequently forced either themselves directly or through interests connected with them to own coal lands, or else in this day of combinations they would find themselves with a railroad into certain coal territories with no traffic left to them.

The CHAIRMAN. Would not the railroad naturally prefer, then, its own coal and favor it as against other shippers?

Mr. RAMSEY. In my view, and in my opinion, if a railroad does hold any coal lands, it holds them for the same purpose that a national bank is required to preserve its surplus fund, for provision against accident in the future, and not for the purpose of mining and shipping, so long as the railroad can secure traffic from independent operators who are mining coal on their own lands and shipping it; but sometimes in the nature of events coal companies become combined into larger coal companies, and those larger companies may shut up mines on some roads and run them on others, and then a railroad, which has been built through a coal territory for the purpose of developing that territory, might, through stronger influences, be absolutely shut out from any traffic. But if they do own coal lands or operate mines they should be absolutely held down to conditions which would prevent them favoring their own mines or their own operations as against any independent operator.

Senator CLAPP. Could you practically do that? Would not the opportunity be such, the railroad operating its own coal mines, as practically to preclude fairness between the railroad company and the competing mine owners?

Mr. RAMSEY. That could not be practiced in such a way that it could not be discovered or reached by a proper enforcement of the interstate-traffic laws. I do not believe a railroad can do those things and cover them up in such a way that a proper investigation would not discover it.

The CHAIRMAN. Should not railroad officials, managers, and employees be prevented by law, on interstate railroads, from having interests in manufacturing and mines on their respective lines, in competition with other producers?

Mr. RAMSEY. Absolutely so. I prohibit it on any road that I have control of, always.

Senator NEWLANDS. Would not that also apply to the stockholders in such corporations? Ought not they to be prevented also?

Mr. RAMSEY. When you go down the line you reach a dividing line in that matter as you do in competitive territories always. There is one point where the two interests come together.

Senator NEWLANDS. And you think that line of division is reached when you include the officials, but exclude the stockholders?

Mr. RAMSEY. Well, the officials are paid to represent and look after the interests of the company and serve the public, and they have no right to protect their own interests as against either, in my opinion.

Senator NEWLANDS. But take the case where a great combination engaged in production had the control of the stock of a given railroad. That control would involve, would it not, the appointment of the officials of the road?

Mr. RAMSEY. Yes; naturally so.

Senator NEWLANDS. And those officials so appointed would be as likely to carry out the will of the combination as if they were interested in the combination itself, would they not?

Mr. RAMSEY. They naturally would carry out the orders of their superior officials, if they did not get them into trouble.

Senator NEWLANDS. Then, is there any way of guarding against that kind of control? You understand, Mr. Ramsey, that a large part of the feeling that exists in the country to-day arises from the fact that great industrial combinations have been formed within the last fifteen or twenty years, the promoters of which are well-known men, who are also well known to be very largely interested in the transportation interests and are credited with the control of large lines of railways, thus making the control of production and the control of transportation identical. It is feared by producers in competition with those great interests that the roads will be so administered as to give to the producing combinations in which they are interested an advantage. Now, is there any way of guarding against that by law that you can suggest?

Mr. RAMSEY. Yes; I think there is a way of guarding against it by law. In the first place, I think that, like some of these other popular impressions, it is not altogether based on facts in a great many cases. I do not believe that any railroad interest to-day, even admitting that it is controlled by the same men who are largely interested in other commercial and industrial enterprises—I do not believe that any railroad to-day is interested or is engaged in transporting freight of such combinations or trusts at any lower rate than the transportation of the freight of independent corporations and trusts is carried on. If they get any benefit at all from these controlled railroad mines, industrial railways—bleeders, as we call them—or such little trunk lines, it is from the rate or the division of the rate that they get from that transportation, and not through any rebate or allowance paid by the legitimate railways—the larger railways—for handling their traffic. Of course, there are persons, such as Mr. Rockefeller and others, who have great railroad interests, owning or supposed to own a great deal of stock. I doubt if they own as much sometimes as they are credited with owning; but I have been connected with some of them and I have yet to know of a single rate made, ordered, or put into effect by any of the so-called "controlling interests" in New York or Wall street. That is almost invariable. I have attended a great many meetings at which some of these men were present, and in almost all cases—invariably, I should say—the question of the rate between certain points is absolutely left to the traffic managers of the various roads; and I doubt if some of these large controlling interests know to-day anything about what rate they are paying. But if they own the stock in a railroad, say a short-line railroad, 15, 20, or 25 miles long, or maybe only a mile long, and that railroad gets a liberal allowance from the legitimate railway lines, of course they make a profit out of that.

Senator NEWLANDS. And they get an advantage over their competitors in that way, do they not?

Mr. RAMSEY. Well, of course, they get a profit on whatever business they do over that road. If that money goes into their general fund of course it helps them out with their net returns. But admitting all that, there is no institution to-day of any extent in this country that could possibly survive or carry on its business successfully on any of the most liberal divisions that could be given to it. That is a mere drop in the bucket. The success of these enormous combinations, such as the United States Steel Company and other like institutions, is due to the concentration of an enormous tonnage, enormous masses of money, new machinery, and the latest modern development of their plants, that enable them to manufacture and put out their tonnage at a much lower rate than a small independent operator can do it. I do not know whether it will be an apt illustration, because there are some people who doubt the results of that investigation, but take the results of the beef-trust investigation. The results of that investigation as they stand show a profit of a little over a dollar a head on the four or five million head that the great beef combination slaughtered during the past two years.

Now, a man who slaughtered a thousand, or two or three or four or five thousand head in a year could not possibly meet that competition. It is not the railroads, gentlemen, that have built up these great trusts or combinations. We are just as much opposed to them as anybody. We would rather have a hundred small manufacturers on our line than one big trust, even if the big trust put out more business, because we are at the mercy of this trust. They can shut down these works to-day and open up others on their other lines that they have all around the country, while the small plant of the independent producer will not do that. The millionaire only travels once, and generally in his private car, without paying much for it, while the thousand workmen and the business men in a town are traveling all the time. It is to the interest of the railroad company to have independent concerns in operation—to have numerous shippers instead of one combination. We are perfectly willing to admit to you, gentlemen, that some of these lateral roads might be regulated a little.

Senator DOLLIVER. I wish you would defer that part of your statement until our chairman returns.

Mr. RAMSEY. I am perfectly willing to repeat that when he does.

Senator NEWLANDS. I have understood from traffic managers in the past that they were the victims of the trusts rather than the promoters of the trusts; that they were often compelled to yield advantages to them that they were unwilling to yield, simply because a great combination could transfer a vast amount of tonnage to some other line and thus compel terms.

Mr. RAMSEY. Compel lower rates.

Senator CLAPP. You say in the past. Is not that so now?

Mr. RAMSEY. In the past they could get special allowances which they can not get now. Probably in some cases they compel low rates, but those low rates must be open and public; so while they get the benefit, every other shipper gets the benefit also. They have an advantage, however, as they can force their business over some roads through the allowances to their short-line railways.

Senator NEWLANDS. But admitting what you say, that the great combinations owe their success to their economic methods——

Mr. RAMSEY. Modern economic methods——

Senator NEWLANDS. And that they are thus enabled to produce at a less cost than their competitors, you will, of course, admit that any advantage gained in the line of transportation, whether that advantage be in the price of the transportation, or in facilities or conveniences, or service, will simply strengthen them in their competition with their weaker competitors. Is not that so?

Mr. RAMSEY. I suppose so, to a certain extent. That is naturally so.

Senator NEWLANDS. In that connection, are you a believer in the tendency toward consolidation of railroads?

Mr. RAMSEY. It does not make much difference whether we are believers in it or not, the result is in that direction.

Senator NEWLANDS. You regard that as the natural evolution of railroading in this country, do you not?

Mr. RAMSEY. "United we stand, divided we fall," is the motto of this country and has been from its foundation. It was so in the beginning, and we have gone on ever since.

Senator NEWLANDS. You do not think, then, that the consolidation which has been effected thus far has been prejudicial to the interests of the country?

Mr. RAMSEY. Well, that is getting onto pretty broad ground. If you ask me whether it has been prejudiced to the development of the commerce and trade of the country, I would say no, that it has been beneficial, and will be beneficial. Whether it has been a benefit to mankind at large and all that, I would rather leave that question to someone more learned in such matters. Certainly the foreign trade which we have to-day could not possibly have been obtained under any other conditions than those which have been brought about by the concentration of capital in developing and in setting forth before foreign countries all these advantages and benefits. A man who had a business of fifty or seventy-five or a hundred thousand dollars a year would be satisfied with continuing his business in a circumscribed territory, but these enormous developments of capital have to seek foreign countries for their trade. As a result, they have spent millions of dollars in development before they really secured any trade. Why, they sent their men into India and Africa and all those countries and they opened establishments there that ran for years at big expense before they secured much headway. Now, all of those things have been beneficial to this country.

Senator NEWLANDS. And you think they have been promoted by the combination of railroads that has been going on?

Mr. RAMSEY. Well, the combination of railroads naturally, of course, tends to a decrease in the long-haul rate on traffic.

Senator NEWLANDS. And in a diminution of operating expenses?

Mr. RAMSEY. And in a diminution of operating expenses. There is one other element in that to which I should like to refer, if you will permit me. I think if the old-fashioned way of short-line railroads and the principal people connected with them located in a circumscribed territory were in effect to-day you would hear fewer complaints. There is nothing which does away with trouble and com-

plaint so effectually as communication between the high-mucky-muck and the complainants. Sometimes if they can have a little talk with the president of the road, or the chairman of the board, or somebody like James J. Hill, or some of those gentlemen, they go away feeling happy; and the result of the old-fashioned way on a great many railroads was that the men in control and management of the property were largely a local institution, and naturally they were closer to the people. Now they say, "Well, these gentlemen down in New York do not care anything for us, and we will just go before the Interstate Commerce Commission and try to secure all that we can from them." It has resulted in that, because the people in control are a little farther away.

Senator NEWLANDS. Probably there has been an increase in the number of complaints?

Mr. RAMSEY. Yes; I think so.

Senator NEWLANDS. And also an increase in convenience and service and a diminution in rates?

Mr. RAMSEY. A diminution in rates.

Senator NEWLANDS. Do you think that combination has gone far enough with reference to the existing railway mileage?

Mr. RAMSEY. I think it has gone pretty nearly as far as it will go. There may be an extension of some of these companies into complete transcontinental lines, making a line clear across the continent under one control; but, in my opinion, there will always be enough separate, distinct, and competitive railway companies in this country to keep up free competition.

Senator NEWLANDS. The combination of these roads, however, is likely to diminish the competition between various lines covering certain territory, one road perhaps giving a lower rate, which must be met by the others. It is likely to diminish that kind of competition, is it not?

Mr. RAMSEY. To some extent, probably, yes; although naturally it will always be in the interest of any road to develop its own territory and its own traffic.

Senator NEWLANDS. But take three roads in a particular territory, those three the only roads there, each road in active competition with the others, and the rates and the service given by one road to the advantage of the public must be met by the others.

Mr. RAMSEY. Yes.

Senator NEWLANDS. If they are all combined, those conditions tending toward better service or lower rates disappear, do they not, unless some other road is built into that territory?

Mr. RAMSEY. Unless there is some other road or some other method of getting to a place in competition with those three roads, naturally there would be no competition between them.

Senator NEWLANDS. Now, would it be possible to run the entire railway system of this country to advantage if all the railroads of the country were combined in one great corporation?

Mr. RAMSEY. Do you mean to the advantage of the public?

Senator NEWLANDS. I mean to the advantage of the public.

Mr. RAMSEY. No; I think it would be better for the public if there was some competition left. Of course, now, you must bear in mind

that this country has some splendid waterway communications—the Mississippi River, the Great Lakes, the seacoast on two sides of it and on the south—so that even the central part of the country is nearer to the Gulf than it is either to the Pacific or the Atlantic; that there is a grand river flowing directly south through the center of the country, clear to the Gulf, and that no combination of railroads could possibly do away with that water competition to distributing points, at least, unless they bought up all the water lines and all the waterways.

Senator NEWLANDS. Of course they could not accomplish a monopoly of the entire transportation. That must be conceded. I was only inquiring as to whether or not there was a limit to the benefit of the combination of railroads, as to whether or not one corporation controlling all the railways would not accomplish an elimination of unnecessary officials and a diminution of operating expenses and an improvement of the quality of the service that would be of advantage to the entire people.

Mr. RAMSEY. I think one combination of all the railroads would be a disadvantage to the people. It might not affect the rates, but it would, to a certain extent, probably, affect the character of the service. Instead of each road striving to keep up its service to the very highest grade, because some other road is giving a new car service or a new train or something of that kind, of course naturally it would settle down to a first-class high grade service; but the existence of one railroad company only would naturally do away with competition in a great many ways other than in the matter of rates. The Government can, of course, control the rates whenever it so desires.

Senator NEWLANDS. If that were accomplished this stimulation of production and wealth and population at certain crossings of the railways of rival lines which is now going on at the expense of intermediate points, and tending to the concentration of population at great centers, would be modified, would it not?

Mr. RAMSEY. I think it probably would.

Senator NEWLANDS. Do you regard it as a favorable condition when in a State like Pennsylvania one-half of the entire population of the State, or, I think, more than one-half of the entire population of the State, is centered in two great manufacturing cities—Philadelphia at one end and Pittsburg at the other?

Mr. RAMSEY. Have you been over the State of Pennsylvania, Senator?

Senator NEWLANDS. I have passed through it.

Mr. RAMSEY. Have you stopped off and seen the numerous manufacturing towns scattered throughout Pennsylvania? I think I would have to differ with your statement of the case.

Senator NEWLANDS. You think the statement is not correct that one-half the population is concentrated in those two centers?

Mr. RAMSEY. Philadelphia is a city of a million and a half people. Pittsburg itself is a city of three hundred and some odd thousand people.

Senator NEWLANDS. But I mean Pittsburg, with its surroundings.

Mr. RAMSEY. Taking in what is called the "Pittsburg district,"

35 miles in radius, that is the greatest tonnage-producing district in the world.

Senator NEWLANDS. What is its population?

Mr. RAMSEY. Its population all told is about a million people.

Senator NEWLANDS. That would make two million and a half people in the two places.

Mr. RAMSEY. Yes.

Senator NEWLANDS. What is the entire population of Pennsylvania?

Mr. RAMSEY. I would not say now, but it is something over 5,000,000 people.

Senator NEWLANDS. Then the statement is approximately correct.

Mr. RAMSEY. Of course, that is true; but the Pittsburg district takes in probably 30 or 40 good manufacturing towns of anywhere from 5,000 to 30,000 or 40,000 people. That is called the Pittsburg district because it is within that radius, including the great coke fields, and the great manufacturing district.

Senator NEWLANDS. What is the radial line from the center?

Mr. RAMSEY. Probably 35 miles.

Senator DOLLIVER. Greater Pittsburg has a population of 500,000.

Mr. RAMSEY. Yes; that is, Pittsburg and Allegheny. Now, Pennsylvania, from the northern limits to the southern limits, and beginning 60 miles west of the Susquehanna River, running to the western boundary of Pennsylvania, contains innumerable mines and innumerable mining towns and good manufacturing towns. Of course, the Pennsylvania Railroad is sometimes known as the State of Pennsylvania. It controls probably three-fourths of the mileage of the railroads of Pennsylvania—pretty nearly that; but with all that may be said about the Pennsylvania Railroad the development of Pennsylvania by the Pennsylvania Railroad has been wonderful. The tonnage of the Pittsburg district the past year was 84,000,000 tons, or a greater amount than the tonnage of Chicago, Philadelphia, New York, Liverpool, Amsterdam, and half a dozen other ports combined. That was the tonnage which originated or terminated in that district, not counting through tonnage. Now, of course, Pittsburg has four railroads, counting the Wabash. I can remember when it had only one railroad, when it had hardly a manufacturing place that amounted to anything. There is the concern of Jones & Northrop—a great, immense plant. Seventeen years ago it was simply a small plant that was miles away from the railroad. Those developments have all grown up and are due to the presence of the railroads there.

Senator CULLOM. There are some other gentlemen here whose statements are brief, and we should like to hear you to-morrow, Mr. Ramsey.

Mr. RAMSEY. Very well. I should like to have inserted in this record a paper written by Mr. E. Michaels, chairman of the terminal facilities committee of the Business Men's League of St. Louis. With the permission of the chair I will have it printed, but I would like to read it in the morning.

The CHAIRMAN. It will be inserted in the proceedings.

[A paper read before the Commercial Club of St. Louis by E. Michael, chairman Terminal Facilities Committee, Business Men's League, February 18, 1905.]

MR. CHAIRMAN AND GENTLEMEN: Rate making or fixing prices by law is, I venture to say, the most important question that has been sprung upon the American people since the Declaration of Independence.

The question is so new, its bearings so important, and its effects so far-reaching that it is difficult to compass it, and it grows as it is considered. It means, in a few words, the Government, without responsibility to the owners, undertakes to control or fix prices to be charged for the use of certain property in the so-called rate-making law. This control, in this instance, applies particularly to transportation, which vitally affects every interest, big or little, in the entire country, and, above all, very seriously the owners of over five thousand millions of bonds and a greater amount of stock representing the capital invested in transportation companies. It goes further than the attempt a few years ago to fix the value of silver by law, and is the entering wedge of a radically dangerous line of legislation. It means control of property without responsibility to the owner. It means that a due regard may not be given to the vitality of the investment so that there is sufficient income to provide against natural wear and tear, depreciation, migration, improvements, and accidents. Lack of regard for any of these necessary provisions for the maintenance of any property may mean bankruptcy. It is manifestly unjust to take away from the owner after his investment is made the power or right to protect that investment by a fair and reasonable compensation for its use. In addition to the vast amount of monetary interest at stake, this control also affects hundreds of thousands of railroad employees who would be brought into elections that would affect not only our national but our State and municipal elections.

The law, as passed by the House of Representatives, in my humble judgment, although it received almost a unanimous vote, has in it the elements of a vast amount of mischief. The Commission may become dominated by strong minds, who, if so inclined, could favor particular localities or industries to the great detriment of other localities and other industries. It is even conceivable that through the acts of designing men entire sections of this country could be built up and developed at the expense of other sections, and all done by and through the sanction or support of law. It certainly opens up to the politicians new sources of revenue for the support of party or person, and by such support unscrupulous men could secure nominations and election and give preelection pledges to parties that with sufficient votes may not act for the best interests of the whole country. By this law transportation companies would be forced into politics for the salvation of their property, and railroads would be absolved from criticism for rates or poor service, and could with all propriety point to the Commission as the author of their troubles or for absolution of their sins.

There must be a reason for this state of the public mind that will not only permit but encourage its representative legislative body to pass a measure of this sort, and the reason of this clamoring for rate regulation is not far to seek. Discrimination in transportation and

inequalities in rates have brought about an acute resentment. Railroad managers have paid too little attention to complaints. The Interstate Commerce Commission, whilst fully clothed with ample jurisdiction and power, has not brought about a correction of the evils complained of.

St. Louis is now suffering in several directions from burdens, and considers itself discriminated against, and like other communities, since little or no attention is paid to complaints, is ready to turn to the Government for relief. While complete and exact adjustment is almost impossible, the fact that abuses exist should not be ignored by railroad managers. At the same time it should not bring precipitous action that has in it the elements of danger such as this rate-making law possesses. Prudence is heavenly wisdom and this country, to escape one evil, should not entail greater ones.

For the Government to take unto itself this power is the greatest step toward centralization that has ever taken place. The question is too new. It has not received the proper consideration. It is a great and momentous step vitally affecting every man, woman, and child in the United States. Before being finally decided and enacted into law the people should be more enlightened upon its various bearings. It is a serious question from every point of view. First of all, it will clearly affect the further promotion of railroads in undeveloped territories, or new investments, where the immediate traffic returns will not pay the fixed charges, or in territories where heretofore enterprising investors were willing to build, relying on the future for returns on their investment.

With such a law, without regard to the past and future, and unprofitable periods, a commission might step in and, disregarding previous losses, fix rates based upon the immediate cost of the service, without consideration for the period of development during which earnings did not pay running expenses or fixed charges. In such territories railroads that are already built might consistently stop operation if the price fixed for the service does not bring adequate returns upon the investment.

Far and beyond the economic side of the question is the political side, the danger of injecting into the politics of the country absolute control of interests of such great magnitude. I can readily understand that the politician will vote unto himself all the power the people are willing he should. There has, to my knowledge, never been a measure before Congress that makes political preferment of as great power as this measure would if enacted into law.

The office of the Executive of the nation, who would, by appointment, control this great power, would become a source of serious contention by the interests at stake, and elections become a menace to free institutions.

STATEMENT OF JAMES I. PRITCHETT.

Senator CULLOM. Please state your name and residence.

Mr. PRITCHETT. James I. Pritchett; Danville, Va.

Senator CULLOM. What is your business?

Mr. PRITCHETT. I am a merchant and a miller in my own name and president of a flour-mill company. The bulk of that business combined amounts to about $900,000 a year.

Mr. Chairman, I am one of six men who came here day before yesterday, representing quite large business interests in our town, and we have come here simply to put ourselves on record, as business men, as being opposed to delegating to the Interstate Commerce Commission the right absolutely to make rates for the railroad companies. We believe that the interests of the shippers will be much better served by permitting them to deal directly with the traffic managers of the roads on which their plants are located. The traffic manager is naturally very much better posted as to the requirements and needs of each shipper than any commission for the whole United States could be. In my town we have only one railroad, and that is the Southern Railway. In my past experience of twenty-odd years in business I have found the officials of that road always willing to listen to our troubles and in a great many instances to take care of us. I believe they have done so as far as it was in their power to do it. It is quite true that we have not obtained all that we asked for, and I do not suppose we ever will, because we are going to continue asking; but we would much prefer continuing our relations with the officials of that road and getting our rates from them than to have to deal with a commission.

Senator DOLLIVER. There was a committee in here the other day from Danville that made a statement that affected my feelings considerably. They made a statement of wrongs and grievances under which they said that community suffered, stating, among other things, that you are stationary in population and in business, and that your rivals, Lynchburg and Richmond, have such superior railway facilities as to take away from you even that which you thought you had. They made a very powerful appeal here to have something done. Have you any knowledge of the fact that they referred to?

Mr. PRITCHETT. Any knowledge of that paper that came here, do you mean?

Senator DOLLIVER. Yes.

Mr. PRITCHETT. I knew very little of it until after it was prepared. I heard it had been adopted and sent here.

Senator DOLLIVER. They seemed to think that Danville was between the upper and the nether millstones, and that unless something was done pretty soon it would be wiped off the map.

Mr. PRITCHETT. Well, as I said in my statement, we have not all we want, and I do not think we will ever get all we want.

Senator DOLLIVER. But these people said you had not anything.

Mr. PRITCHETT. That is a mistake, sir, I think. I believe in doing justice, and there is no question about the fact that the Southern Railway has done a great deal for Danville.

Senator NEWLANDS. It was stated, among other things, that on two occasions Danville itself had subsidized railroads with a view to securing competition, which was effected in both cases until that competition was destroyed by the consolidation of those roads with the Southern Railway, and as a result it lost its advantages as a competitive point and the rates of freight were several cents above those of Lynchburg.

Mr. PRITCHETT. The rates are higher. The state of affairs that you refer to was before my business career, but it is a fact that the old *Virginia Midland* Railroad, running from Washington to Danville,

was a competing road and was absorbed by the system then in existence. I do not think it was then known as the Southern.

Senator DOLLIVER. I am interested in this case. A very well-prepared memorial was presented here. Among other things this memorial said that the cities of Lynchburg and Richmond, with which Danville has traded in competition for over fifty years, the said Southern Railway has begun to discriminate against Danville in favor of two small towns of not more than one-quarter the population of Danville, the town of Martinsville, 40 miles west, and South Boston, 30 miles, where the Norfolk and Western Railway competes with the Southern, and the said Southern Railroad is now transporting commodities through Danville to both these points at a less rate than to Danville. Then it goes on in a rather impressing way to the general decline and fall of Danville. It seems to represent the commercial bodies down there.

Senator NEWLANDS. I thought it was a municipal body.

Senator DOLLIVER. The city of Danville itself in its municipal capacity brought this statement here. Judge Aikin presented it personally, I think.

Mr. PRITCHETT. I am not prepared to think that the Southern Railway has discriminated against Danville in favor of either of those towns. That may be the fact. If it is, I am not informed of it.

Senator DOLLIVER. Why does it not use these lateral lines which the city of Danville contributed to build for the purpose of maintaining its commercial fortune? Why does it not use those lines for the purpose for which they were constructed?

Mr. PRITCHETT. Why does not the Southern Railway use them?

Senator DOLLIVER. Yes.

Mr. PRITCHETT. I can not answer that question. I do not know why they do not do it, if they are not doing it. I do not think the Southern Railway is purposely oppressing Danville.

Senator DOLLIVER. I should hate to think so myself, but these people left that impression on us.

Mr. PRITCHETT. Yes; but I do not believe they are. I have not been so oppressed myself, and I will say right here that that memorial does not represent the sentiment of the business interests that we represent.

Senator NEWLANDS. Does it represent the business interests generally of Danville?

Mr. PRITCHETT. I would not like to state positively what percentage it represents, but I believe I am safe in saying that the larger business interests of Danville would not be in sympathy with it.

Senator DOLLIVER. What did you say your business interests were?

Mr. PRITCHETT. Milling.

Senator NEWLANDS. What kind of milling?

Mr. PRITCHETT. Flour and corn.

Senator DOLLIVER. Have you suffered by reason of these more favorable rates to Lynchburg and Richmond?

Mr. PRITCHETT. No, sir.

Senator DOLLIVER. Where do you sell your flour?

Mr. PRITCHETT. We sell it all over the Carolinas and Georgia. We have what is known as a milling in transit rate, which does away with

the small arbitraries and discriminations that are complained of in this memorial.

Senator DOLLIVER. You have a sort of special rate?

Mr. PRITCHETT. It is not special. It is given to all mills in the United States, so far as I know. All the mills on that line get it.

Senator DOLLIVER. Have you noticed any trouble about the rate from New York to Lynchburg being very much less than it is from New York to Danville, in the purchase of goods down there?

Mr. PRITCHETT. No, sir; I am not interested in that, because I do not deal in that direction.

Senator NEWLANDS. The policy, I think, seems to be, then, to get the goods that are produced at Danville out of Danville, but the complaint of these people, as I understand it, is concerning the goods which are brought in which are compelled to pay a higher freight than those that go by a longer haul to Lynchburg.

Mr. PRITCHETT. That is true.

STATEMENT OF W. P. BOATWRIGHT.

Senator CULLOM. What is your name?

Mr. BOATWRIGHT. W. P. Boatwright.

Senator CULLOM. Where do you live?

Mr. BOATWRIGHT. Danville, Va.

Senator CULLOM. What is your business?

Mr. BOATWRIGHT. Furniture manufacture.

Senator CULLOM. Have you anything to say on this subject which we are now discussing?

Mr. BOATWRIGHT. Yes.

Senator CULLOM. If you have, go ahead and say it to the committee in your own way.

Mr. BOATWRIGHT. As Mr. Pritchett informed you, gentlemen, we represent a group of the business men of Danville, which group of men represent a large business interest there, both manufacturing and mercantile. The purpose of this group of men coming here is to answer and contradict, in part, that petition of the city of Danville which has been presented here. You asked Mr. Pritchett what he knew about that petition. Few of the citizens of Danville knew of that petition before it was prepared and forwarded to your committee. When it was known that such a petition had been prepared, acting on their individual initiative, this group of citizens got together and discussed the matter, and they have come here. Now, in so far as that petition presents the freight situation there, I believe the figures which it gives to be largely correct. We are a noncompetitive point. It is a fact that we have subsidized two roads in times past and that both of them have since passed into the control of the Southern, which now controls all the railroads centering in our city, giving us no competing line, and subjecting us to the local rates from the competing points near us, which are Lynchburg and Richmond. We pay the through rate to Lynchburg plus the local rate. Those figures are correct, and we do not attempt to dispute them. We are subjected to some burdens in Danville in the way of freight rates, which are heavy, which we want to see relieved, and which we hope to have relieved some of these days. But when that

petition goes on to say, after recounting these facts, that our town has diminished in population, that it has seen a decline in real estate, that it has had its tax rate raised, we want to put on record a dissent from that and to deny that. The figures will show that our population has not gone back in a single year. I believe Judge Aiken said our population had increased because of the taking in of some outside suburbs.

Senator CULLOM. Enlarging the territory?

Mr. BOATWRIGHT. Enlarging the territory; but considering that total population in that whole area, it has been shown to be larger by each succeeding census. That is capable of proof. The assertion that our taxation rate has been raised certainly can not be maintained. The only change in our tax rate in the last fifteen or eighteen years, I am informed by the chairman of our finance committee of the common council, has been a reduction of 5 cents on the hundred, from $1.45 to $1.40, and, at the same tax rate, we are to-day paying interest on an increased bonded indebtedness incurred for internal improvements that we have made from time to time. We are paying the interest on that. I say these things show that our condition has not been backward. We want to disabuse that impression which was made on the minds of this committee, as shown, I believe, by a question, I think, of Senator Dolliver, in which an allusion was made to a dead town.

Senator DOLLIVER. I did not originate that expression.

Mr. BOATWRIGHT. I am quoting that to show what kind of an impression was made on the committee.

Senator DOLLIVER. I should hate to believe that myself.

Mr. BOATWRIGHT. I am simply quoting that to show the kind of an impression that such a statement makes.

Senator DOLLIVER. I confess it had a tendency to make such an impression here.

Mr. BOATWRIGHT. We know that.

Senator CULLOM. The impression I got was that your town is growing in spite of this railroad.

Mr. BOATWRIGHT. That is the impression we are here to make—that our town is growing. I say we have not the freight rates which we should like, but in spite of that we are growing and we are prospering. I do not want to state—to go on record—that we are drying up and dying, without a denial of it. I want to go over these several points as succinctly as is possible, but at the same time as plainly as possible, before this committee.

Now, to come to the prayer of that petition, that you approve the bill before you, it is not necessary for me to attempt, nor would I attempt before this committee of experienced men, to make any argument in favor of that; but we want to say to you that public sentiment is by no means unanimous, as such a petition coming from our legislative body there would indicate. As Mr. Pritchett stated to you, some of the largest business interests of our town are opposed to that measure, the pending railroad measure, and are opposed to it on the grounds which you hear from so many expert witnesses, whose statements I will not attempt to repeat. The point has been raised about incoming and outgoing freights. We have manufacturers there who are interested in this far-reaching outgoing freight; but we

believe that the spirit of this petition looks at this incoming freight to the exclusion of all other questions, to the exclusion of the broader questions that should be considered. Comparing our outgoing freight with those of our rivals, I am informed by gentlemen who have investigated the subject that they are in a measure satisfactory. We believe we can prosper under those rates. We hope for better things, and we want to go on record as individuals, representing certainly a considerable element of the business life of Danville, as being opposed to enlarging these powers which now reside in the Interstate Commerce Commission.

STATEMENT OF J. ELWOOD COX.

Senator CULLOM. Please state your name.

Mr. COX. J. Elwood Cox.

Senator CULLOM. Where do you live?

Mr. COX. At Highpoint, N. C.

Senator CULLOM. What is your business?

Mr. COX. I am engaged in manufacturing, in the line of hard woods mainly. I manufacture shuttle blocks, bobbin heads, and things of that character. I have a number of different plants in the South, in several different States—in North Carolina, South Carolina, Arkansas, and Mississippi. I ship the products of those plants mainly in this country. About two-thirds of the product is shipped in this country, and about one-third I export. I simply want to give a little bit of my experience. I have been in this business for twenty-five years, and I think in all that time, not only on the Southern Railroad, but on any other line over which I have shipped, I never have had a grievance which did not result either in my getting what I wanted when I properly presented my case to the railroad officials or in their convincing me that I was wrong in my request.

In addition to that line of business, I am largely interested in the manufacture of furniture in High Point. There is a great deal of furniture manufactured there, and we are now making street cars. There is no railroad competition there, and I mention these facts to show that the Southern Railroad have been reasonably fair to us. Our town has grown from about 2,000 people in 1890 to about 10,000 people at present. In 1890, when we began the manufacture of furniture there, we had about 2,000 people and we began in a very small way. The first company organized there had a capital stock of $9,000. To-day we have 50 factories and more than a half million dollars represented. We ship about 40 carloads a day of manufactured furniture and a good portion of this goes to the Pacific coast.

I may also state that I am the president of the Manufacturers' Club in High Point, and while I have no written authority I know I voice the sentiments of the manufacturers there when I state that we would rather deal directly with the railroad officials than with some governmental official.

Senator CULLOM. I suppose you are aware that we do not expect it will be required that you should go to a commission in the first instance in order to get a rate.

Mr. COX. I discovered that since I came here. We had the impression, and I think the most of the country has the impression, that *this commission* would actually make the rates.

Senator CULLOM. Yes, I infer that they have that impression from what other gentlemen have said.

Mr. COX. I got that impression myself.

Senator CULLOM. If you go on dealing with the railroad as you are doing and finally come to a point where you disagree, would you have very much objection to submitting the question of discrimination to a commission for determination?

Mr. COX. Well, that certainly would not be so bad as to have the rates fixed finally by the Government official, who might not be an expert and who might be uneducated in that line of business and possibly incompetent.

Senator CULLOM. Most of the members of the present Interstate Commerce Commission have been in office for a good many years and they are necessarily dealing with these questions every day.

Mr. COX. Yes, sir.

Senator CULLOM. Do you think they would be a dangerous tribunal to go before with any such questions?

Mr. COX. I would think not, sir.

Senator CULLOM. Then the only point of difference between different people on this subject is that many people desire that this Commission shall have the power when they determine what a reasonable rate is to fix the rate, while the railroad men and others say they do not want them to have that power at all. That is the contention existing here between the railroads and other people, and we are trying to find out what ought to be done.

Mr. COX. It seems to me, Senator, that the difficulty there is that whatever the Government fixed would be inflexible; there would be no changing it hereafter. If they happened to get it too high the railroads, perhaps, would not want to lower it.

Senator CULLOM. Suppose the court fixed it. What would you want to do then?

Mr. COX. It would be the same thing; it would be inflexible. There would be no change, and as I said in the outset, so far as my experience goes, we would get what we want by dealing directly with the railroad officials, the traffic managers who come there and who know the circumstances and conditions surrounding us. That is the case in the territory that I represent. The traffic managers come there. The division freight agent comes there and we appeal to him, and if we do not get what we want we appeal to the higher officials, and oftentimes we have them come there.

Senator CULLOM. What I wish to do is simply to call your attention to the fact that there is nobody proposing to pass a law requiring that the Commission shall make the rates in the first instance at all; but it is simply proposed to give the Commission the power to determine what a reasonable rate is, where you complain or a community complains; and if the rate is determined to be unreasonable, that that Commission shall have the power to say what a reasonable rate is.

Mr. COX. Well, perhaps there would be no objection to that; but generally we understand when the Government does a thing that it is inflexible; that it is ironclad, and there is no getting away from it. We think we are closer to the railroad people and that they are closer to us than the Government itself would be.

Senator CULLOM. Of course, if they are closer to you and you get along with them all right, you never would make a complaint.

Mr. Cox. That is true.

Senator CULLOM. You may proceed with your statement.

Mr. Cox. Well, sir, that about covers the ground. I wished simply to state that we think if these rates were established there would be little possibility of a change, and that we would rather deal with the people with whom we are acquainted and who have manifested an interest in our community. Of course, our interests are mutual, as has been demonstrated here by almost every person who has spoken.

Senator DOLLIVER. You have 50 furniture factories in your city?

Mr. Cox. Yes; some very small and some large.

Senator DOLLIVER. That is a magnificent showing.

Mr. Cox. Yes; we have a very good showing. The largest corporation has a capital of $175,000 and the smallest would be perhaps $4,000 or $5,000, manufacturing some branch line, not on a very large scale. But it is an interesting fact that this town has been built up practically in the last fifteen years, and while we have sometimes had difficulties and grievances with the Southern Railway we have always been able to settle them, and they have demonstrated that they have an interest in us. As I say, we ship a good deal now to the Pacific coast. If there was a rate established at so much per ton per mile, which I believe is not likely to be the case, such towns as Grand Rapids, Mich., and Evansville, Ind., which are in competition with us, and Memphis, Tenn., where lumber is just as abundant as at High Point, they would cut us out of the Pacific coast trade. We ship a lot of stuff to the Pacific coast. We have a rate now to the Pacific coast of $1.75 per hundred. I am not quite sure what the Evansville rate is, but I think it is $1.45. They are almost halfway to the Pacific coast from us, but their rate is not very much less than ours.

The CHAIRMAN. I should like to ask one question here. In this locality where you live and in the country generally are there any complaints of the rates being too high?

Mr. Cox. Very little, sir.

The CHAIRMAN. The rates are generally acquiesced in by the shippers?

Mr. Cox. Yes; that is generally the case. I think we have had more complaint about the scarcity of cars during the busy season in the spring and fall than anything else; more than we have had about freight rates. We had a great dearth of furniture cars at one time. It takes an especially large car to get in the minimum weight. They issued an order at one time to send every furniture car on their line to High Point, and in a matter of ten days we had plenty of cars.

Senator DOLLIVER. You could not ask anything more than that?

Mr. Cox. We could not ask anything more than that. I only give that as an illustration of their efforts to help us. I think we are giving them about 40 cars a day, and they can afford to do it.

STATEMENT OF MR. ARTHUR C. SMITH.

The CHAIRMAN. Please state your name and occupation.

Mr. SMITH. Arthur C. Smith. I am president of M. E. Smith & Co., a Nebraska corporation, selling wholesale dry goods, notions, and furnishing goods at Omaha, Nebr. We also have quite a large manufacturing plant for shirts, overalls, duck clothing, and goods of that character. I was under the impression from all the newspaper reports I have read of this hearing that it was the intention to form a commission for making the railroad rates for this country. Of course, in Omaha we are a distributing point. We have rates there that are the result of business interests, of compromises—fights of different kinds and descriptions at different times.

It was also my impression that if changes were made in rates by the Government they must necessarily go onto a mileage or distance tariff basis. Of course, this would be a very severe blow to distributing centers. All of these smaller places would come in and claim inconsistencies which could readily be verified, and, to my mind, it would be the death of these large distributing centers. Take, for instance, the State of Iowa. The legislature of Iowa in their wisdom established a distance tariff. The result is they have no large cities in Iowa. In my opinion, the river cities of Iowa would be double and treble their present size if it had not been for these distance tariffs, which have made little towns spring up.

Senator DOLLIVER. But their growth has been during the existence of this distance tariff, has it not?

Mr. SMITH. I do not think they have grown as rapidly as other cities right around them, and that is the only reason we could attribute it to.

Senator DOLLIVER. Possibly this breaking up of the advantages that work in favor of the distributing centers might help us a little.

Mr. SMITH. That may be. That is what I am here to argue against. Of course, to go on still further in the business in which I am represented, we can go almost anywhere where there are direct lines. Take the staple goods, of course we do not pretend to sell them very far from home. We have at the present time 50 salesmen on the road, with offices in Denver, in Salt Lake, San Francisco, Seattle, Spokane, and on certain special lines in Minnesota, and as far East possibly as Chicago. We keep an office in Chicago with one representative there. Of course, at these far distant places the most of our business is on these specialty lines that we make ourselves, and if we get correct service on the railroads we can go into those territories. Of course, on heavy goods our business is circumscribed entirely by these distributing centers. In other words, these jobbing points can go so far, and when the rate is a little better from some other town, that point gets the business.

There is one other point I want to submit to your consideration, and that is this: Every railroad in the United States, in my opinion, has absolutely inadequate terminal facilities. In Omaha you will find occasionally one road, as you will in some other cities, that has good terminal facilities, but there are a whole lot of others that have not. These terminal facilities are exceedingly expensive; they are usually in the congested districts of a city, and they cost a great deal

of money to acquire. Now, in my opinion the better way is not to tamper with these roads, but to allow the railroad companies to make some revenue and to make a fair return to their stockholders, and likewise to acquire better facilities in the way of trackage and terminals for the handling of this business. This was gone over so thoroughly by Mr. Ramsey that I do not know but I am wearying you with the point I wish to make on that subject. I do not think you will find much complaint, except as between localities. One locality thinks some other locality has a better rate. There are inconsistencies, but I think they are bound to happen.

I do not believe the man lives who is wise enough to make rates for all the railroads, because one road goes into a certain place at a distance of 300 miles, while it takes another one a hundred miles farther to reach the same point. But on the competitive points they have got to make the same rates or else not do any business, and if you put in a commission, if they are closely connected with one locality, they are apt, perhaps unintentionally, to have their judgment warped. Now, we had a little trouble in Omaha at one time about the question of our rates east bound from Omaha into Iowa. The rates from the east Atlantic tidewater to Council Bluffs and to Omaha were exactly the same. The rate from Omaha to Nebraska points was exactly the same from Council Bluffs as from Omaha, but Missouri freights coming into Iowa were obliged to pay a differential of 5 cents a hundred. It was put before the Interstate Commerce Commission and there was a man on the Commission who was from Sioux City, Iowa.

Senator DOLLIVER. Judge Yeomans.

Mr. SMITH. Well, that case was decided, and we always felt that if it had been anybody except a man who was locally interested in Iowa, that we would have gained our point at that time. As it was, it went against us.

Senator DOLLIVER. And that prejudiced you against the whole project.

Mr. SMITH. Well, that may be. We do not mean to say that he meant to be unfair, but at the same time he was more loyal to Iowa than he was to Nebraska. Perhaps it is only proper that he should be. If the tables had been reversed, it might have been the other way. But, in other words, we believe we can deal with traffic managers and get what we want, and if we can not get what we want we can at least get a compromise. I have always found that wherever there is business, the railroads are looking for a chance to move it, and railroad men are willing to get out their pencils and figure and see if there is not some way that that business can be moved; but there is no use of putting in rates where there is no business.

I do not know that I have any more to say, except that I am a member of the Grain Exchange at Omaha. We did not ask any railroad to cut down their local rate, but when we started our exchange there all we asked was that the through rate should be the combination of the locals, so the stuff would come in there and go out again, and they put it in, although I think the railroad managers were very much inclined to think that we could not make a go of Omaha as a grain market. At the same time, I want to say that although we have been growing only two years, we are the third grain market at the present time in the United States. Chicago is first, Minneapolis

is second, and we are third. Kansas City has dropped from third to fifth. Now, we do not want the railroads to reduce their revenues. In other words, they are entitled to a fair revenue. All we wanted was a proper adjustment of rates. We got together and talked it over, and through the help of our friend Mr. A. B. Stickney, president of the Great Western road, the rates were put in. We have been doing business in grand good shape ever since.

In this way, as I say, the railroads need the revenue, and we want a great increase in facilities. In my opinion, that is the crucial point on that question. The roads should make money and should improve their facilities for handling business. Take the rates on cattle. I have noticed that the cattle shippers in our country have, some of them, been complaining a good deal. In my opinion, the cattle business, considering the risk involved, is done by the railroads at a very low price. If they make a poor run they are liable to shrinkage and to a suit from the shipper. They almost always settle it. They never let the case come into court. Now, railroad rates have been steadily reduced, and when the business of the country is prosperous, it seems to me, it would be very bad judgment to go to work and pull down a structure that we may be very sorry about after it is pulled down. It is very easy to tear things down, but it is sometimes hard to build them up.

Senator CULLOM. But we are talking about building it up a little, instead of tearing it down.

Mr. SMITH. I think it has been building up since 1898. We were in the center of the great dryness and disturbance. We went all through the days of William Jennings Bryan, and there is one other thing I want to say.

Senator DOLLIVER. They must have had as bad an effect on you as the distance tariff did on us.

Mr. SMITH. I do not want to say anything impolite, but I am a good Republican, and I can tell you right now that in the dark days of 1896 it was pretty humiliating to go down to New York and meet the banker friends down there who were lending us money and have them say, "What is the matter with you?" and all that kind of thing. We grinned as best we could, but we certainly have retrieved ourselves in grand shape and we are very proud of it. We all voted for the present régime and not for any change which might bring chaos and a great deal of trouble; and as was remarked here this morning, if you get this thing going once it may be more expensive than any silver panic.

Senator CULLOM. Does anyone wish to ask any other questions?

Senator DOLLIVER. How have the interior cities and villages of Nebraska prospered during the last ten years?

Mr. SMITH. Splendidly. Why, our merchants have made so much money that they have gone out of the merchandise business and have gone into banking.

Senator DOLLIVER. Has not Omaha had special consideration at the hands of these traffic managers and rate makers?

Mr. SMITH. None that I know of, any more than other places like Kansas City. If they have I do not know of it.

Senator DOLLIVER. How do you account for the size of Omaha as compared with the neighboring cities?

Mr. SMITH. I lived there a great many years, Senator, but at the same time——

Senator DOLLIVER. I notice that the depot that was built by act of Congress as the terminus of the Union Pacific in Council Bluffs is practically deserted.

Mr. SMITH. Well, that is a fight of a great many years ago. Conditions have very materially changed, but I would say this: My father came to Council Bluffs in 1868, but he moved his business to Omaha in 1886. We lived there and went back and forth until 1892. Since that date we have resided in Omaha, as well as done our business there. In the first place I think there was some public spirit in Omaha. They all pulled together. They were progressive. Take, for instance, the question of railroads. The Wabash wanted to come there. They asked for donations of bonds, and so on. There was an old banker, Mr. Pusey, and when some of the younger men wanted to vote bonds, Mr. Pusey went up there and said: "The boys want to do this, the boys want to do that; but Council Bluffs is a great place; they have got to come here," and all that kind of stuff.

They dilly-dallied along until the officials of the Wabash got very tired of it. I do not think it was called the Wabash then. It was the St. Louis, Kansas City and Northern. Perhaps it was changed back again afterwards. At all events, the result was that finally the railroad company put on the words "Omaha division." The Council Bluffs people said, "If you don't take that word 'Omaha' off there, we will refuse to vote you these bonds that you want." The railroad officials told them then, in a polite way, to go to the dickens, and said, "We will not come to your town." They built the line in there a long way south of the Burlington tracks and the Rock Island tracks and went right up to the Union Pacific transfer, about halfway between the town of Council Bluffs and Omaha, and no such place as Council Bluffs appeared on the map, as far as a passenger train was concerned. They ran the trains to the Union Pacific transfer. Well, as I say, the Omaha people always gave the railroads the "glad hand," were always willing to work with them on any reasonable kind of a basis, and that is so now. We will give them our streets, give them anything they want, and there has been no trouble with the railroads.

Senator DOLLIVER. We had a witness here the other day who, in discussing the Iowa distance law, said it enabled all the merchants of Iowa to distribute merchandise within their own territory; that it resulted in great satisfaction and contentment, which he did not want us to disturb.

Mr. SMITH. If they want it, of course they have a right to it.

Senator DOLLIVER. We are not proposing to fix railroad rates, but we are proposing to get somebody to decide controversies when they arise upon complaint between the shipper in a given case and the railroad. Now, have you any objection to that?

Mr. SMITH. No, I have not, only this: I do think the burden of proof should be on the shipper and not on the railroad company. As I understand it now, the way this thing comes up, if this Commission decides that a rate is unfair, they immediately put it in. Then the railroad, sometimes within six months to six years, can get a decision, and if they get the court to hold that the rate is reasonable

it goes back, but in the meantime the railroad is losing the additional revenue that it would be entitled to if it had been decided the other way.

Senator DOLLIVER. You have had a good many controversies about these rates yourselves, have you not?

Mr. SMITH. We have had some of them, yes.

Senator DOLLIVER. Have you had any that you were unable to bring to a settlement?

Mr. SMITH. All communities have things that they want decided in their favor. Take it in certain lines of freight, the rates from Atlantic points to Omaha are but a trifle less than they are to the Pacific coast. The railroad companies take the ground that to cross Panama and go around the Cape, and so forth, they are obliged to make these rates to meet the competition to which they are subjected, and I have no doubt of the truth of their statement.

Senator DOLLIVER. Suppose you had a controversy with a given railroad, say the Wabash Railroad, involving the prosperity of your business, and found yourselves unable to secure what you thought was proper from the traffic department of the road. Would you have any objection to the Interstate Commerce Commission taking up a complaint of yours, making a careful examination of it and bringing such a controversy to a settlement?

Mr. SMITH. I feel this, Senator, that with the law arranged as it is evident in my mind it is going to be that it would make a perfect flood of protests from all points all over the country.

Senator DOLLIVER. But very few of the complaints are about rates.

Mr. SMITH. They are not the way it is now, but put the burden of proof on the railroad company and maybe there would be.

Senator DOLLIVER. It certainly would be unfair to require the private shipper to go into the railroad company's business and furnish the proof concerning all those things that enter into the reasonableness of a rate.

Mr. SMITH. It is a question of one locality against another.

Senator DOLLIVER. But I am talking now about a question between you and the railroad. Have you any objection to the creation of an impartial public tribunal to take up a question which involves the solvency of your business—it may be your ability to do business at all—to make a careful examination of it, and render an effective decision, and to find the just and reasonable rate that ought to be charged you?

Mr. SMITH. In itself I do not know that I see any objection to it.

STATEMENT OF HAYWARD G. LEAVITT.

Senator CLAPP. Please state your name.

Mr. LEAVITT. Hayward G. Leavitt.

Senator CLAPP. What is your business?

Mr. LEAVITT. I am a manufacturer of beet sugar, and have been interested in promoting the development of irrigation in the West.

Mr. Chairman, I have no set speech to make. I merely want to say that I came here to protest against what I supposed was the intended action of this committee in turning over to a body of men the regulation and the making of rates in the United States.

In the development of the beet-sugar industry in the West I have had all sorts of questions to meet—questions as to rates, questions as to the development of new territory under new and changing conditions. I have never found the railroads unwilling to meet me halfway, and I have never had a fair, reasonable request that I have made refused by the railroads.

It is not to their business interest to do so; and I believe that to give any body of men the power to make rates for the railroads would be to disturb business from one end of this country to the other. I have lived among the farmers now for sixteen years. I lived nine years on a farm before I entered into any manufacturing business. I am acquainted with the cattle-raising business, the cattle-feeding business, and the raising of crops.

Senator DOLLIVER. Where is your beet-sugar business?

Mr. LEAVITT. At Leavitt, Nebr. It is the rarest thing to hear any complaint from any farmer west of the Missouri River to-day as to rates.

Senator DOLLIVER. You are not at present a member of the Cattle Growers' Association?

Mr. LEAVITT. I am not, but am very well acquainted with them.

Senator DOLLIVER. We have heard from them.

Mr. LEAVITT. That may be true, sir. The trouble is not with the rates, it is with the farmers themselves. There is not a farmer who keeps a ledger, who keeps an account as to what the cattle cost him that he is raising. He raises a crop of corn, he feeds it to the cattle, he takes care of them himself. At the end of the season, when he has sent those cattle to market, he does not know whether he would have been better off to have sold his grain and not to have raised the cattle or to have gone through the operation that he went through.

Senator DOLLIVER. I hardly think that is a fair description of the stock-raising people either of Nebraska or any other Western State that I know of.

Mr. LEAVITT. The stock people complain of the service they have been getting, of the length of time in transit, not of the rates. How would a change in rates help them in getting a larger price for their cattle when they reach the market?

Senator DOLLIVER. They receive the market price, less the cost of getting the cattle there.

Mr. LEAVITT. The market price is the cost of raising the cattle plus the cost of getting them to market, plus the profit that the farmers would receive if they would get together and insist upon a profit, and not compete one with the other in the sale of their cattle. Let me ask you to-day, Senator, if there is a more prosperous class of people in the whole world than the farmers of the West, or a class that have less reason to complain?

Senator DOLLIVER. Well, I think there is a fair measure of prosperity all over the West.

Mr. LEAVITT. There is a greater measure of prosperity among them to-day than at any time in the sixteen years in which I have been acquainted with the West. My relationship with the farming interest of the West has necessarily been very close and intimate. The beet-sugar business was not an easy one to introduce

Senator DOLLIVER. Have you any objection to referring contro-

versies between the shipper and the railroad to some impartial public tribunal with a view to getting a fair settlement of them?

Mr. LEAVITT. I will very frankly express my objection, that any tribunal you may appoint will be influenced by political considerations.

Senator DOLLIVER. Why?

Mr. LEAVITT. For the reason that they have a political ambition to serve. Now, to-day the great work of the reclamation service is conducted by a man who has never built a ditch, a reservoir, or a dam in his life.

Senator DOLLIVER. Who is that?

Mr. LEAVITT. Mr. Newell.

Senator DOLLIVER. He is a scientist. His trouble is not politics.

Mr. LEAVITT. The policy of the reclamation service was to develop the arid West. The men who were put in charge of it, in order, I presume, to increase the importance of the office, perhaps to increase their salaries, have so worked as to try to monopolize that business instead of working in harmony with the men who were developing the West; have so worked it as to try to drive out of existence every man who was working for the development of the irrigation established before the reclamation work of the Government was begun. That is the kind of men you meet and have to do business with when the Government meddles with business. I am coming down here later in the year before Congress to ask for an investigation of the unbusinesslike methods that are being carried on by a Department of the Government——

Senator DOLLIVER. Unfortunately that question goes to another committee.

Mr. LEAVITT. That goes to another committee. I refer to the Department of the Interior, because the development of irrigation has come under that Department. It is trying to pull down the work of the Department of Agriculture in order to injure men who are developing irrigation privately in the West. The engineers of the reclamation service are going over the West telling the farmers that no white man would raise beets—in other words, that the work of the Agricultural Department in building up that industry has been foolish. Now, irrigation could not have been developed in a great many sections of the West to-day if it had not been for the introduction of the beet-sugar industry.

Senator DOLLIVER. And that circumstance has given you a definite prejudice against anything like the Government regulation of railways?

Mr. LEAVITT. I believe that the law to-day gives to the Government such full control of the matter of railroad regulation and with such safeguards as to be fair both to the railroad and to the shipper, and that all that needs to be done is to have that authority exercised to protect everybody. There have been very few complaints——

Senator DOLLIVER. Are there any complaints about rebates in the sugar trade?

Mr. LEAVITT. None whatever, sir. I am absolutely independent of the sugar trust or of any combination. Perhaps some of these gentlemen here are aware of the fact that I fought the sugar trust here in matters of tariff. In all the time I have been in business I have never had any rebate whatever except a half rate on the machinery with

which I built my factory, which was open to everybody who wanted to build a factory. And I think because of the very nature of the work I was doing, the development of a country that was unpeopled, I had a right to ask and would have received favors from the railroad if they had been handed out to anybody, except possibly such strong concerns as the Standard Oil Company; but with any man who was doing business in the West I had an equal opportunity to get any rebate or advantages that were going. I never received any advantage that was not open to everybody.

STATEMENT OF MR. JAMES R. JOPLING.

Senator CLAPP. Please state your name.

Mr. JOPLING. James R. Jopling.

Senator CLAPP. And your residence.

Mr. JOPLING. Danville, Va.

Senator CLAPP. Your occupation.

Mr. JOPLING. I am president of the First National Bank and of the Morotock Manufacturing Company, which manufactures workmen's clothing.

Senator CLAPP. Proceed now to make your statement.

Mr. JOPLING. Mr. Chairman, in addition to the two occupations to which I have referred I am financially interested in a small way in several of the larger and more prominent business interests of the place, and I am here because I feel that my city has been done an injustice by the paper which has been put on record before you. I think it has been injurious to the town, I think it has been unfair to the railroad, and I think it has been very hurtful to the business amity existing between the railroad and the city, that this paper has been injected here. We do not enjoy all the railroad rates that we want. I doubt if we ever will, but we are going to keep on trying to get them.

We are less favored than Lynchburg and Richmond, but I think we are equally favored with all other places on the Southern Railway similarly situated, and I believe that we are receiving as fair treatment at the hands of the Southern Railway as other cities upon the line, and I believe that we have grown and prospered, and are prospering as much as the average industrial city of the United States. We would be very willing to make a comparison with Lynchburg in regard to growth since the war. Although she has enjoyed these great advantages, our growth in population and our growth in business since the war, I think, has far outstripped her. We do not wish it to go on record unchallenged that we are a dead city. We are thriving; we are prospering; we have prosperous merchants; we have prosperous factories; we have banks; we have a growing place. I think rents are as high with us as they are in Lynchburg and I know of no reason for thinking that the railroad company has discriminated against us to the great extent that is represented in that paper which has been filed here.

I should like to make one statement in regard to the main question before you. I believe that the Interstate Commerce Commission has done a great good both to the people of the United States and also to the railroads. I would prefer to see it continue as a potent critic, rather than an originator or creator of rates

STATEMENT OF MR. H. D. BROWN.

Senator CLAPP. Please state your name, residence, and occupation.

Mr. BROWN. My name is H. D. Brown; I am the president and general manager of the Brown Coal Company at Sioux City, and also am the treasurer of the White River Cattle Company.

Senator CLAPP. Proceed now and make such statement as you desire.

Mr. BROWN. These gentlemen who have preceded me have stolen a good deal of my thunder. I was under the impression, as they were, that the object of this Commission was to originate rates, and I certainly want to go on record as against anything of that kind. In connection with the coal business, we organized that company ten years ago with very little money. For the last six years we have been doing the business of a thousand dollars a day. I do not want to see anything done that will interfere with it in any way. We have had some trouble with the railroad companies. They call me a kicker, but I would very much sooner take my chances with the traffic managers of railroad companies than with the average man who occupies a position on one of these commissions. As I say, these gentlemen have said about everything that I can say. I do not know that I can add anything except to repeat what they have said.

Senator CLAPP. What have you to say about your cattle business?

Mr. BROWN. In our business in cattle we go into Texas and ship our cattle up to our ranch in South Dakota. Everett is our point where we unload, and I think we have a very reasonable rate from Texas to that point.

Senator DOLLIVER. Have those rates increased lately?

Mr. BROWN. No, sir.

Senator DOLLIVER. Mr. Cowan testified that the rates upon cattle from the common Texas point to South Dakota has been doubled, I think, in the last few years.

Mr. BROWN. We have a rate from northern Texas——

Senator DOLLIVER. That is the place he was talking about.

Mr. BROWN. From there to Everett, S. Dak., on our cattle of $100 a car—a 36-foot car. For those cars we put in 40 head.

Senator DOLLIVER. He was looking back to a time when it only cost him $50 a car.

Mr. BROWN. That was before my time, evidently.

Senator CLAPP. How long have you been in that business?

Mr. BROWN. About five years.

Senator DOLLIVER. I suppose the cars have very largely increased in size in the last fifteen or twenty years.

Mr. BROWN. That, I think, is true. I think they formerly used a 29-foot car, and the 36-foot car is in use now. That has obtained ever since I have been in the business.

Senator DOLLIVER. Is this rate made on the basis of feeding in transit?

Mr. BROWN. No, sir; it is just a flat rate.

Senator DOLLIVER. A flat rate to Everett?

Mr. BROWN. Everett and common points—Pierre and Gettysburg.

Senator DOLLIVER. How do you get down to Sioux City from there?

Mr. BROWN. I simply live in Sioux City.

Senator DOLLIVER. You do not ship cattle to Sioux City?

Mr. BROWN. No, sir.

Senator DOLLIVER. Do you ship to Chicago?

Mr. BROWN. Well, you can ship that way or you can go around by St. Paul.

Senator DOLLIVER. What rate do you get there?

Mr. BROWN. Our rate from the Missouri River point to Chicago on fast cattle is $100 per car, as I remember it.

Senator DOLLIVER. Has that rate been modified in recent years?

Mr. BROWN. Not since I have been in the business.

Senator DOLLIVER. It is a steady, uniform rate?

Mr. BROWN. Yes, sir.

Senator DOLLIVER. Is there any complaint among cattlemen as to the rate being exorbitant?

Mr. BROWN. Well, there has been in the past two years by reason of the low class of cattle. They think the railroad ought to help share the decline, but the railroads do not do it. I do not know but they are right about it, and I do not know as they are to blame for the decline in price. I do not charge it up to them, but the last few years it has been pretty hard on the cattlemen. Naturally they feel a little bit nervous about anything that enters into the cost of cattle.

Senator DOLLIVER. Are you familiar with the opinions of the mercantile and manufacturing community at Sioux City with respect to this pending legislation?

Mr. BROWN. I am not entirely. I have been crippled for the last month, more or less, and have been at home. I am the vice-president of the Commercial Club at Sioux City, and I should be in touch with their thought in the matter, but that subject never has been brought up when I have been there. The matter of rates and the matter of this investigation by this committee have never been brought up when I have been there, and I wish it understood that I simply express my own views in the matter.

Senator DOLLIVER. Have you given much attention to the question we are trying to deal with here?

Mr. BROWN. Simply in connection with my own business.

Senator DOLLIVER. Now, with the understanding that we are trying to provide some public tribunal, impartial in character, to stand between the shipper and the railway company, not for the purpose of initiating rates, but for the purpose of adjudicating differences that may arise between the shipper and the carrier, have you any objection to such legislation?

Mr. BROWN. That is anticipating. I never had a question come up that I was not able thoroughly to adjudicate with the railroad people.

Senator DOLLIVER. You have had no trouble that left an unsettled question?

Mr. BROWN. No, sir. In my twenty years' business with railroads that has been my experience.

Senator DOLLIVER. But in case such a question should arise, involving, in your opinion, the profits and possibly the solvency of your operations, would you regard it as favorable or unfavorable to the public interest to have such an impartial tribunal to hear and adjudicate a complaint in respect to the reasonableness of a rate?

Mr. BROWN. I repeat again that that is anticipating.

Senator DOLLIVER. We are trying to anticipate a situation of that sort.

Mr. BROWN. I am always in favor of arbitration as against law suits. That has always been my plan.

Senator DOLLIVER. But suppose the arbitration should come to nothing and you should be left with a standing controversy with the railroad involving the material prosperity of your business. Would you have any objection to the creation of a public tribunal to adjudicate that question and bring it to some sort of a final settlement?

Mr. BROWN. I should just as soon agree on some individual man like yourself or some other Senator or some other banker. I think I would be just as likely to get a good square deal as I would with the Commission.

Senator CLAPP. In shipping north are the tariff charges now by the car or by the hundred pounds?

Mr. BROWN. By the car.

Senator CLAPP. Do you know whether they used to be by the hundredweight?

Mr. BROWN. The charge has been by the car ever since I have had anything to do with it.

Senator CLAPP. How much are the cars changed in size?

Mr. BROWN. They are 36 feet long now, and I think they used to be 29 feet.

STATEMENT OF MR. GEORGE L. MILLER.

Senator CLAPP. Please state your name.

Mr. MILLER. George L. Miller.

Senator CLAPP. What is your business?

Mr. MILLER. I am not in active business.

Senator CLAPP. What is your residence?

Mr. MILLER. Omaha.

Senator CLAPP. Proceed.

Mr. MILLER. Mr. Chairman, twenty-odd years ago I appeared before a Senatorial committee of which the late lamented Senator Platt, of Connecticut, was the chairman, and at that time I made the statement which I now repeat here, that in matters of railroad regulation I am opposed to Federal interference in all or in part. I do not believe in the principle, and I do not believe in the practicability of any such interference. When the interstate-commerce law was passed the essence of that law as I then read and understood it, and now more than ever understand it, was that no greater charge should be made for a long haul than for a short haul in the administration of railway transportation. The effect of that law, in my opinion, has been nothing from that time to this except to vex in an attempt to regulate railroad ratings. Now, sir, I have said that, and I say now that competition is the law of business, with railroads which have transportation to sell, just as it is with merchants who have goods to sell, and that no combination can overcome or control competition if unvexed by statutory regulations. I do not believe it possible, without great injury to both roads and people, for the Federal Government to intervene between the man who wishes to buy transportation and the

man who has it for sale, in locality, State, or district in which traffic originates.

I date back to a career in the newspaper business in Omaha. In my paper for years I combated State and Federal regulation of all the affairs of the people. "Railroad monopoly" was a standing cry of the ignorant, in order to control the railroad business. But in spite of all the efforts which have been made, no statutory regulation has ever had one thing to do, whether Federal or State, with that gradual reduction of railroad rates from 4 or 5 cents per ton per mile on long hauls, and even higher than that on short hauls, from the seventies down to the present. The rates have gone down to a point, according to authority, of less than 1 cent per ton per mile on long hauls throughout the United States. The country which I claim to represent and the opinion which I intend to reflect in this regard is that the men of thought in my section of the country and in the city for which I more distinctly speak are abundantly satisfied with the railroad rates of the country. As to discriminations and rebates, they are a part of that evolution out of which has come a higher law that has suppressed them without the aid or the execution of the interstate law.

Now, sir, I can say, further, that in all attempts at State regulation, local regulation, and Federal regulation my own opinion is that they emanate from an agrarian spirit which is being revived throughout the United States, starting with municipal ownership and coming to Government ownership. I believe that if the Townsend bill is passed, no matter what may be said about the tribunal to be created, the result will be undesirable. There is no objection to the long-haul rate at present. In so far as there is an objection, I believe it to be the result of an agrarian movement which will assail everything that pertains to our largest financial combinations, railroads included. It is largely political in the localities where it originates, among men who do not really do the business of the country. My State is a garden of beauty, the home of the greatest prosperity that ever was seen per capita among men who work with their hands for a living on the farms. They not only live in plenty, but in the midst of luxury. There is no complaint except people who would be glad to see a condition amounting first to municipal socialism, and second to State socialism, and it is now proposed to carry it to the Federal authorities, to advance through the Interstate Commerce Commission to a new departure which will absolutely have control of the railroad ratings of the country in any emergency.

A few words more, Mr. Chairman, and I shall have done. I have studied the subject for many years in the face of popular clamor. I have always had a hankering for popular clamor, because I thought it developed good results by enabling men who have thoughts to reach conclusions that would finally be wise. But I believe that if this Congress shall pass this law and put it into operation the complaints from these localities will be just as great, if not greater, than they were before.

Mr. Chairman, I have had large experience in the politics of this country, and I foresee that the very next question, under the administration of this new law, should it be passed and the Commission given its power, will be Government ownership. Not two months ago I had the honor to state to a member of the Cabinet, and I will

repeat the statement here, that if this bill is passed it will be only the entering wedge to Government ownership, and that would mean a bureaucracy that would control this country, I do not think for good. I think it would be for evil. That is all I care to say, Mr. Chairman.

Senator DOLLIVER. I think most of us agree with you as to the evils to be anticipated from the Government ownership of the railroad systems of the United States. Now, what are we going to do with these complaints that come up here voiced by such associations as Mr. Bacon represents, voiced by chambers of commerce of all the great cities of the country, organizations of cattle raisers, meat producers, and all those great industrial interests, claiming that there are abuses in the present railroad management for which the law provided no method of adjustment and settlement?

Mr. MILLER. If the gentleman will pardon me, I think the expert testimony here disproves that claim.

Senator DOLLIVER. It makes very little impression on the fellow who thinks he has a grievance.

Mr. MILLER. I believe these things come from a set of men who are dissatisfied with conditions that are the best the world ever saw.

Senator DOLLIVER. That does not apply to such a distinguished body as the board of trade of Chicago?

Mr. MILLER. I can not answer for the board of trade of Chicago, I believe the management of these railroads is the most enlightened management that ever controlled two thousand million dollars of money or property, those interests which the railroads embody. I was one of the first ten white men located in Omaha, and I have seen this development go on, and I have seen the managers of these railroads meet the questions presented to them, both those relating to passengers and freight, and they have met them with the greatest success and satisfaction to the real men of business.

Senator DOLLIVER. Mr. Miller, just take the State of Illinois; that is one of the great industrial and agricultural States of the country.

Mr. MILLER. I agree with that.

Senator DOLLIVER. Here comes up the clamor, as you call it——

Mr. MILLER. I call the political part of it clamor.

Senator DOLLIVER. It is in the form of a petition to Congress, in which the Millers' State Association of Illinois and the State Grange, the Patrons of Husbandry, representing a large farming interest, and the Southern Illinois Millers' Association, the Fruit Growers' Association, the Board of Trade at Cairo, the Chicago Board of Trade, and the Quincy Freight Bureau, the Rockford Grocers' Association, and the Illinois Travelers' Protective Association, all claim that there are abuses for which the present law provides no adequate remedy.

Mr. MILLER. Yes; and I take it, Mr. Senator, if you will allow me, they refer not to abuses in rate, but abuses in discrimination against individuals and localities.

Senator DOLLIVER. They say so.

Mr. MILLER. Well, let them produce the proof.

Senator DOLLIVER. They say the abuses are unjust discriminations involving rates.

Mr. MILLER. Yes; I agree with that.

Senator DOLLIVER. And they say they ask for legislation that will provide an effectual means of protection to the public.

Mr. MILLER. Why, certainly.

Senator DOLLIVER. From the imposition of unreasonable and oppressive charges for the performance of a public service in the transportation of passengers and property. How do you account for that?

Mr. MILLER. Well, sir, I do not pretend to account for any gentleman in Chicago, or any number of gentlemen in any of these associations who come forward and say that the charges and the rate from Illinois to the seaboard, or from one local community to another, are unjust; but I will undertake to say this: That no Chicago Board of Trade can disprove the palpable fact that in the last three decades railroad rates on the long haul have gone down, without the aid of any law, but vexed by a great many laws at different times; and this reduction of railroad rates and the prosperity of the country are the answers to what these gentlemen say.

Senator DOLLIVER. Now, as showing that these boards of trade and other bodies in Chicago are acting in good faith in this position, let me call your attention to what their complaint was. Their complaint was that in the shipping of merchandise, outside of breadstuffs and beef, from Chicago to common points in the Southeast—Georgia, Alabama, and South Carolina—they have been exposed for thirty years, or since 1870, to a freight discrimination in favor of New York and Boston, and notwithstanding the fact that they were very much nearer these points they were charged a rate very much in excess of the rate charged from the Atlantic points.

Mr. MILLER. Yes; that is a discrimination between localities.

Senator DOLLIVER. They brought that complaint before the Interstate Commerce Commission, who heard it faithfully, and they said that that discrimination was unjust and unreasonable; that whatever it may have been in 1870, it had become in the course of thirty years an unjust discrimination against the whole business west. The Commission made an order substituting certain rates to more nearly equalize that situation.

Mr. MILLER. That must have been recently.

Senator DOLLIVER. No; that was in 1895. They brought a suit to enforce that order. It was litigated to the Supreme Court. The court decided that the Interstate Commerce Commission had no power to make an order fixing these rates. Now, would you have any objection, in the case of a long-standing controversy of that sort, to have some impartial public tribunal that would be able to carefully and fairly examine it, and prevent so obvious a discrimination as the discrimination complained of in that case of Chicago versus these railroads?

Mr. MILLER. I would say that so far as discrimination is concerned I am not master of the question of rates between these points, but I am not here to contend for the abuses that occur from discrimination of these points and localities and individuals.

Senator DOLLIVER. Would you have any way to settle them?

Mr. MILLER. I am not big man enough to devise it. I yield to my distinguished friend, Senator Dolliver, who is thoroughly competent, and who is in a forum where he can go on with it. I wish to say that I stand steadily on one proposition here, regretting, deprecating, and denouncing abuses in discrimination between points and between individuals that have grown up; but that is the higher law of business, and you can not legislate it out of existence any more

than you can legislate a man out of existence who has committed no crime. It is all a vain shadow, an empty thing. I am only saying that in regard to the rates on the long and short haul; our people should be let alone. They have grown rich and prosperous beyond the hopes of man. You, Senator, represent the imperial agricultural State of Iowa. You can tell better than I can what has been done by these railroads to create that civilization.

Senator DOLLIVER. I am very much interested, because you have had a long business experience as well as a long public experience, and what I want to get at is whether it would not allay the socialistic agitation in favor of railroad ownership if the Government of the United States should provide a fair and impartial tribunal by which the abuses, if such there are, which arise in private management of railways may be brought to a speedy and effective adjudication?

Mr. MILLER. I give it to you, sir, as my decided opinion that it would not.

Senator DOLLIVER. What is driving some people toward State ownership?

Mr. MILLER. Socialism—an agrarian assault upon money and capital.

Senator DOLLIVER. But there is no socialism among our farmers.

Mr. MILLER. Oh, there is a whole lot of it. Ask Bryan. He never made a speech in my State in which he did not appeal to the antagonism that is natural between the poor and the rich. It is the text and burden of his song and teaching; and I am sorry to say he destroyed, by his preaching, the Democratic party, of which I thought so much. It has all gone, and we have none.

Senator DOLLIVER. Now, if we are to avoid the influence of that sort of preaching, is it not wise for those interested in conservative standards of government and politics to get rid, as far as possible, of these long-standing controversies about railroad management, so that in the future a man can not come and appeal to the sense of injustice and wrong that he may think he has suffered at the hands of the private managers of railways?

Mr. MILLER. I answer that, sir, by saying that the same cries will come up again that have been coming up all the time about railroads. That is my belief, based on my personal observation. Those same cries will come up to this tribunal and they will come to you in the Senate, and your ears will be filled with complaints.

Senator DOLLIVER. What am I to say to a man who comes to me and says, "I have a controversy with this railroad company about the reasonableness of my railroad rate?" What have I to say to him when he asks simply that we create here a public tribunal, impartial in character, to take up these questions of controversy and bring them to some sort of effective settlement?

Mr. MILLER. Senator, it would be presumption in me to tell you what you should say, but I will tell you what I would say.

Senator DOLLIVER. That is what I want to know.

Mr. MILLER. I would say to that, "Gentlemen, you have a very low rate now. You have been enriched by these railroads beyond anything you ever expected." I am talking about the long-haul rate now.

Senator DOLLIVER. Suppose he says in reply that he does not agree with that statement?

Mr. MILLER. Then I would prove it to him.

Senator DOLLIVER. But he does not want to waste his time. Would you leave that unsettled controversy?

Mr. MILLER. I would.

Senator DOLLIVER. Would it not be wise to recognize the possibility of errors, mistakes, and abuses of management, and to provide some remedy?

Mr. MILLER. To the extent, Mr. Senator, of reforming and regulating and controlling abuses.

Senator DOLLIVER. Well, an overcharge is an abuse.

Mr. MILLER. An overcharge is an abuse, but it will regulate itself. The law of business will regulate that. That is my observation for the last thirty years.

Senator DOLLIVER. You are aware, Mr. Miller, that these roads claim, and the courts allow them the right to collect, as much from the public as is necessary to pay the expenses of operation and a reasonable return on the capital invested?

Mr. MILLER. Yes, and I want them to make more. I want the railroads to be very rich.

Senator DOLLIVER. Do you want them to make more than a reasonable annual dividend on the capital invested in their property?

Mr. MILLER. Well, I would think it would not hurt the country any if they did, as long as these rates are within these low ranges, which I am now describing, which have been testified to by the distinguished president of the Wabash, and by other well-informed men, who say that these rates are absolutely low beyond all conception.

Senator DOLLIVER. Then an impartial tribunal will not disturb them.

Mr. MILLER. Impartial tribunal! Mr. Senator, this is a popular Government, and "impartial" tribunals from the Supreme Court down are affected by agitations and popular clamor. With all respect to legislators, members of Congress, and even the Senate, these questions come up and public opinion bears upon them. It bears upon this very question. This very committee is here to-day in response to social agitations that have no ground for complaint in my view. This very committee to-day is a result of a clamor and a demand for things of which people are utterly ignorant. Men in my State, and I doubt not in yours, have undertaken to enact laws whereby they would regulate railroad rates. The question of the long haul is altogether forgotten. If some bills which were passed could have gone into practical enforcement, it would have been impossible to allow for the long haul. It would have ruined the railroads, and it would have ruined the people.

Senator DOLLIVER. Why did they not go into enforcement?

Mr. MILLER. Well, because they were vetoed by one governor who knew his business.

Senator DOLLIVER. The maximum rate law of Nebraska was vetoed by the Supreme Court.

Mr. MILLER. Yes, I referred to one governor who vetoed one measure, and the maximum rate bill came up and did not stand the test of the court because it was unreasonable.

Senator DOLLIVER. Of course they made a careful examination of it and rendered an impartial decision on it.

Mr. MILLER. Yes; that is true.

Senator DOLLIVER. Would it not be possible to create a commission, for example, of very experienced business men, as free from prejudice as it is possible for men to be, to make an examination into the merits of these controversies that are numerous, and reach a decision about them?

Mr. MILLER. I would not have any objection to making all the investigations possible and to inform the public of the actual facts. That is all this honorable committee has to do, as I understand it. But coming back to the main proposition, as a citizen of the State of Nebraska, and as one of the men who has represented his State in the upbuilding of that country, I protest against the Federal Government coming into that country and interfering in any manner with railroad rates.

Senator DOLLIVER. But the Federal Government is not proposing to deal with anything except interstate commerce. We are not intending to invade Nebraska.

Mr. MILLER. That means transcontinental commerce.

Senator DOLLIVER. We have that authority, have we not?

Mr. MILLER. Oh, I have no doubt of your power, and you will have all the power whenever you ask for it. The Constitution, since John Marshall's time, I believe, has been one of implied powers. You can do anything the public ask you to do, and the courts always respect it. Now, with regard to the finances of this country, the Supreme Court once decided that to "coin" money was to print paper that made a promise to pay money. That is so, if I recollect right.

Senator DOLLIVER. I guess they did.

Mr. MILLER. They said that the constitutional provision for coining money meant that you could print a promise to pay a dollar and that that was coining money. Now, in the face of the revival of all this agitation, notwithstanding all that the railroads have done for the development of this country, I can imagine that the court may be swayed by public opinion.

Senator DOLLIVER. Do you think it would be impossible to get a commission of experienced business men—men, for example, who have had long business experience, as you yourself have had——

Mr. MILLER. I beg your pardon, you are mistaken as to my record. I have never had a long business career.

Senator DOLLIVER. I think you have. Would it be impossible for such a commission to take up these controversies between individuals or communities and a railroad system or a railroad combination and to go into these controversies faithfully, with a view as to getting at what is right in the matter, and then have a provision of law to give effect to their decision, so that it would be binding upon the parties?

Mr. MILLER. Well, Senator, I still stand upon the principle that it is wrong, that the Federal Government has no business to engage in selling transportation to the farmers of my State or to fix any price in any way, either on a bill of complaint or otherwise. You will have complaints enough, coming from every quarter and every locality.

Senator DOLLIVER. A few wise and conservative decisions would decrease them, perhaps.

Mr. MILLER. I think not. Now, Mr. Senator, you heard here that masterful man of the Wabash——

Senator DOLLIVER. We were very much interested in his statement.

Mr. MILLER. He told you of the vast complications and the interests that are involved in bringing about for the whole country the best results possible for its advancement and prosperity in agricultural and industrial pursuits, and in commerce. It was very instructive to me.

Senator DOLLIVER. And to all of us.

Mr. MILLER. And it illustrates my point, which is the danger of this Government in any way going into these lines of business and thwarting or obstructing or injuring them from that transaction in transportation that comes between the man who wants the transportation and he man who has it to sell. These are economic principles at the bottom of all things, the laws of supply and demand. The buyer and seller meet on transportation as they meet on wheat.

Senator DOLLIVER. But in this case the buyer meets only one side, at these lonely railroad stations throughout the country.

Mr. MILLER. I would be very glad if the members of this committee could go into my State and ride over any of the leading railroads and see the prosperity and growth and development of these people under this railroad management.

Senator DOLLIVER. But suppose at a Nebraska railroad station, where there is only one road, a man has a lot of cattle to ship, for instance. Does he meet the railroad on anything like the same terms that the private citizen meets a merchant in Omaha?

Mr. MILLER. No, sir; not on the same terms; but I will tell you the terms on which he has met him. He has met him on the terms that this railroad wants to stimulate the raising of cattle in that particular locality. The railroad wants to carry that freight, wants to carry those cattle to market, just as much as the man who sells them wants the railroad to carry them. It is a question of developing the country by making such a rate that the farmer can raise his steers and make a profit on them, and that is what has enriched my State and the whole western country. It is because this enlightened managerial man at the head of these affairs never allows this freight to escape him.

Senator DOLLIVER. This condition of prosperity out there seems to have grown up in the last ten years. Prior to 1896 there was a good deal of complaint of poverty and misfortune of one sort or another in Nebraska.

Mr. MILLER. Yes; and what was the cause?

Senator DOLLIVER. I don't know.

Mr. MILLER. I would remind you that it was the loss of crops one season after another, and nothing else. The railroads came in and took care of our people just as though they were a father and his children, if you please; built them up, and donated them money. In the original plantation of population in the vast Missouri country the trans-Pacific railroads did more than all that has been done in the last twenty years to plant populations there so that they might have business. The raising of stock in the Rocky Mountains was one of the enterprises encouraged and built up by the railroad. I was in part the accoucher of the discovery of winter grazing. The Union Pacific Railroad was the first to proclaim that wonderful dis-

covery, which was reported in my newspaper. You may not remember so far back, Mr. Senator, but I was the first to proclaim the discovery that beef could be fattened on the winter grass on the plains and that sheep could be grown on the mountains. It was not my discovery. I was the mere vehicle of its expression. The Union Pacific Railroad began its work by proclaiming to the country in hundreds of thousands of pamphlets the fact as to what could be done.

Senator DOLLIVER. You speak of your newspaper and its very well-known history. Omaha still has great newspapers.

Mr. MILLER. Yes.

Senator DOLLIVER. Which represent the public feeling on public affairs.

Mr. MILLER. Yes, they do. What do you mean by the "public feeling?"

Senator DOLLIVER. What is the attitude of the daily press of Omaha on the question we are considering now?

Mr. MILLER. The attitude of the press is in favor of the agitation that brings subscribers and advertisers. They have no courage nor independence; but I am speaking for the Herald, that I brought into existence, a Democratic paper that had the satisfaction—and I am proud of its record—of combatting these very things thirty years ago. I was doing it then, and I have been at it ever since, and I never surrendered.

I appeal to you, Mr. Senator, because you are one of the representative men of this nation, and I know all about you and all your successes in life. Pardon me for being so personal, but I say no man knows better than you do, in my judgment, that for the purpose of promoting the business and trade of this country what these railroads want is freedom, unvexed freedom to transact business like other people. Individualize them and put them in their proper relations to the community. If they are not subjected to this Federal power, they can go on and do what these individual men of ambition and enterprise and skill and ability have done, like the Jay Goulds, and even the Harrimans. Why, even Rockefeller, you know, has reduced illuminating oil from a dollar a gallon that I used to pay, and muddy stuff it was. Even Rockefeller is selling the best illuminator in the world for 15 and 17 cents a gallon. I thank him very much. I am a Rockefeller man for that very reason. Why, the railroads have reduced these freights down so that every farmer in my country is a prosperous man, if he has any thrift.

I beg your pardon for having talked so long. The Senator must take the responsibility.

INTERSTATE COMMERCE COMMISSION,
Washington, April 11, 1905.

Hon. STEPHEN B. ELKINS,
Chairman Senate Committee on Interstate Commerce,
Washington, D. C.

DEAR SIR: The Interstate Commerce Commission has the honor to submit the following in response to your request for an opinion as to the effect which the enactment of the Esch-Townsend bill would have upon differential freight rates in the United States, and whether it would be necessary under such a law to set aside and prohibit differential rates altogether.

It is assumed that the inquiry has reference to the provision in subdivision 6, section 9, Article I, of the Constitution, as follows:

"No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another."

Without attempting to discuss the question at length, or to point out the absurd consequences to which a contrary conclusion would lead, the Commission holds with the utmost confidence that the exercise of authority for the regulation of rates, as proposed in the Esch-Townsend bill, would not be controlled or limited in any degree by the above-quoted provision in the Constitution. If it be assumed, as it certainly is not conceded, that this provision has any application to charges for transportation to and from the several ports, it would seem that such rates should be so adjusted as to avoid the prohibited preference. To establish the same rates from a given point to all ports would obviously, as it seems to us, prefer the most distant port, other things being equal. To establish rates on a uniform mileage basis, so that distance alone determined the relation of rates, would in many if not most cases result as a practical matter in the actual preference of one port over another. And this is all the more apparent in view of the fact that numerous "ports" have been established from time to time at various points in the interior. If the constitutional restraint is held to apply at all to railroad charges, which appears to us improbable, then the question of what constitutes a preference depends upon a variety of circumstances and conditions besides the element of distance. In short, upon that theory, it would be necessary to determine in each case the proper adjustment of rates which would place different ports upon a basis of relative equality; and that is precisely the aim, among other things, of the act to regulate commerce and of the measure in question. The establishment of a differential might be and often would be the appropriate and only method of accomplishing the purpose of the constitutional limitation.

It strikes us as very singular that this question, if it has any merit, has not been raised heretofore, Differentials have long been applied without the suggestion that they were in disregard of this paragraph of the Constitution. The differentials between New York, Philadelphia, and Baltimore, for example, were reviewed and sanctioned in 1882 by three eminent constitutional lawyers, viz, Allen G. Thurman, Elihu B. Washburne, and Thomas M. Cooley. It evidently did not occur to them that the allowance of such differentials to the ports named was in conflict with the "no-preference" clause of the Constitution, for no mention of the matter appears in their very able and comprehensive report. To say that the carriers themselves may do what the Government could not permit is simply begging the question.

The leading authority upon the subject appears to be the case of Pennsylvania *v.* Wheeling and Belmont Bridge Company et al. (18 Howard, 421), decided by the United States Supreme Court in 1855. The following paragraphs are quoted from the opinion in that case:

"There are many acts of Congress passed in the exercise of this power to regulate commerce providing for a special advantage to the port or ports of one State, and which very advantage may incidentally operate to the prejudice of the ports in a neighboring State, which have never been supposed to conflict with this limitation upon

its power. The improvement of rivers and harbors, the erection of light-houses, and other facilities of commerce, may be referred to as examples. It will not do to say that the exercise of an admitted power of Congress conferred by the Constitution is to be withheld, if it appears, or can be shown, that the effect and operation of the law may incidentally extend beyond the limitation of the power. Upon any such interpretation, the principal object of the framers of the instrument in conferring the power would be sacrificed to the subordinate consequences resulting from its exercise."

"The clause in terms seems to import a prohibition against some positive legislation by Congress to this effect, and not against any incidental advantages that might possibly result from the legislation of Congress upon other subjects connected with commerce, and confessedly within its power."

"Besides, it is a mistake to assume that Congress is forbidden to give a preference to a port in one State over a port in another. Such preference is given in every instance where it makes a port in one State a port of entry, and refuses to make another port in another State a port of entry. No greater preference, in one sense, can be more directly given than in this way; and yet the power of Congress to give such preference has never been questioned. Nor can it be without asserting that the moment Congress makes a port in one State a port of entry, it is bound, at the same time, to make all other ports in all other States ports of entry. The truth seems to be that what is forbidden is not discrimination between individual ports within the same or different States, but discrimination between States; and if so, in order to bring this case within the prohibition, it is necessary to show, not merely discrimination between Pittsburg and Wheeling, but discrimination between the ports of Virginia and those of Pennsylvania."

Your attention is also invited to the case of Knowlton *v.* Moore, decided in May, 1900 (178 U. S., 41). On page 104, in the opinion in that case, Mr. Justice White says:

"It follows from the collocation of the two clauses that the prohibition as to preferences in regulations of commerce between ports and of uniformity as to duties, imposts, and excises, though couched in different language, had absolutely the same significance."

The decision then holds, all the justices concurring upon this point, that the requirement of uniformity is satisfied by geographical uniformity—that is, by a law which is the same in all parts of the United States. It would seem to follow that the no-preference clause, having absolutely the same significance as the uniformity clause, would be complied with by any regulating statute whose provisions and grant of authority operate generally and with equal force in every part of the country. If uniformity in one case means simply geographical uniformity, does not the prohibition of preferences in the other case mean merely that the legislative enactment shall be of general and equal application?

Another case which seems to us significant is the Texas and Pacific Railway Company *v.* Interstate Commerce Commission, commonly known as the Import Rate Case. (162 U. S., 197.)

The Commission had held, construing the act to regulate commerce, that rail carriers could not lawfully transport imported traffic at

lower rates than they charged on domestic traffic of the same kind from the same port to the same destination. The Supreme Court decided that this was an erroneous construction of the act, and that lower rates on import traffic were not necessarily in conflict with the statute. It appeared in that case that from some ports no difference was made between import and domestic traffic, while from other ports the difference was very great. These varying and dissimilar rate adjustments were essentially differentials, as the record in that case disclosed. But there was no suggestion by counsel from first to last that the rate relations then in question were at variance with the no-preference clause of the Constitution, nor does the elaborate opinion disclose that any such point was deemed worthy of consideration.

The tenor of these decisions seems to us unmistakable. Neither the Esch-Townsend bill nor any measure of similar character can be seriously regarded as conflicting in any degree with the provision of the Constitution which prohibits preference of the ports of one State over those of another.

All of which is respectfully submitted.

MARTIN A. KNAPP, *Chairman.*

The following letter was ordered printed in the record:

STATEMENT OF MR. J. B. MANBY.

SOUTHWEST LAND AND LIVE STOCK COMMISSION COMPANY,
Trinidad, Colo., May 6, 1905.

Hon. S. B. ELKINS,
Chairman Interstate Commerce Committee, Washington, D. C.

DEAR SIR: As a shipper of live stock from the Southwest for over twenty years, I was very much surprised by the statement of ex-Senator Harris, of Kansas, to your committee, that railroad rates from the Southwest to Kansas City and other Missouri River points were extortionate, especially from Panhandle and Arizona points. The above is not true, and investigation would show that rates from the Southwest are less per mile to Missouri River points than the mileage rates charged locally in the middle corn-feeding States. As an illustration, the rate from El Paso, Tex., to Kansas City is 60 cents per 100 pounds; from Las Vegas to Kansas City, 40½ cents per 100 pounds; from Trinidad to Kansas City it is 31 cents per 100 pounds, and from La Junta to Kansas City it is 28 cents per 100 pounds, while the distances from the above-mentioned places to Kansas City are 1,262, 771, 636, and 555 miles, respectively, or about 10 cents per car of 20,000 pounds per mile. I am not in the employ of any railroad company and never was. My experience in rates has been gained as a broker and shipper of cattle and sheep. The effect of the Interstate Commerce Commission has not been a benefit to the stockman, as any favors he may request of a railroad company are denied because it is a violation of the interstate-commerce law, and any small matter of minor importance which a railroad company does not want to do for the accommodation of a shipper would be denied for the same reason, whether it was true or not.

On the other hand, the average shipper is not posted on the interstate-commerce law and does not know whether he is getting any

benefit from it in place of the accommodations he has lost, so he attacks the rates, and, in rushing in like a bull at a red rag, makes statements that won't stand investigation, and the result is he gets no legislative help. In my experience I never made a request to a railroad for a reduction of a rate or for a special joint rate without having such request granted, provided the amount of business justified it and sufficient time given to publish a special tariff; in other words, no business proposition would be turned down provided there was money in it for the railroad and no law violated.

Of late years service for the transportation of live stock has been bad, as the railroads insist upon adding tonnage of dead freight to fill out a train of live stock, which generally consists of 15 or 20 cars of stock and 30 to 60 cars of dead freight.

Twenty years ago the average engines in the West could only haul 15 cars, and any shipper could get a special train if he would guarantee 13 cars. Now the average engine can haul 50 cars, but it would be next to impossible to load 50 cars of cattle at one point for one train, as the stockyard facilities at these western shipping points are inadequate to handle such a large number of cattle, and, outside large incorporated companies, the average cattleman does not possess enough cattle to fill 50 cars, even if he had together all he had and was quitting the business. The way shipping is done now, a number of small owners ship together, but as they separate their own cattle at the shipping point, it takes all day to get 25 cars loaded.

If it were possible, I would recommend better facilities for loading, feeding, and watering stock while in transit, and faster transportation to market, and make it compulsory to furnish cars at or within a certain date, so that stock would not be half starved and lose weight in flesh while waiting for cars.

I do not know whether this has been brought to your notice, but the loss to shippers in the past few years has been enormous waiting for cars, and railroad companies disclaim responsibility and refuse to reimburse shippers where they have bought stock by weight on a day fixed for delivery and reweighed again the day the cars came and losing 10 per cent in weight, which would mean from $3 to $5 per head on cattle and 30 to 50 cents per head on sheep.

I remain, very respectfully,

J. B. MANBY.

Thereupon (at 5 o'clock and 42 minutes p. m.) the committee adjourned until to-morrow at 11 o'clock.

THURSDAY, *May 11, 1905.*

The committee met pursuant to adjournment.

Present: The chairman and Senators Cullom, Kean, Foraker, Clapp, and Newlands.

The CHAIRMAN. Mr. Ramsey, I believe you have the right to be heard this morning.

Mr. RAMSEY. That was the arrangement, may it please the commit-

tee, but on account of Governor Cummins being here, who is desirous to get away, and on account of my own desire to hear the governor, who is well versed in railroad matters, I will, with the consent of the committee, retire in favor of the governor.

The CHAIRMAN. Mr. Bacon, you have the first right to be heard over anybody else.

Mr. BACON. I waive my privilege, Mr. Chairman, in favor of Governor Cummins.

STATEMENT OF HON. ALBERT B. CUMMINS.

The CHAIRMAN. Governor, it is not necessary to explain to you the nature of the resolution under which this investigation is proceeding. You know the pending question, and you may, in your own way, make your statement. According to the rule we have adopted, after you shall have finished your general statement the members may have some questions to ask, and possibly one or two may be asked while you are making your general statement, in order to elucidate some particular point.

Mr. CUMMINS. Mr. Chairman, while I am entirely at the disposal of the committee, it would be very gratifying to me if I could continuously submit my statement, though that will be entirely at the pleasure of the members of the committee.

The CHAIRMAN. You may state your residence and occupation, and then you may proceed.

Mr. CUMMINS. My name is Albert B. Cummins; I reside in Des Moines, Iowa, and I am by profession a lawyer.

The CHAIRMAN. And at present the governor of the State, I believe.

Mr. CUMMINS. At present I happen to be the governor of the State.

The CHAIRMAN. We would like to have that appear in the record.

Mr. CUMMINS. Mr. Chairman, before I proceed I desire to express my appreciation of the courtesy of Mr. Ramsey and of Mr. Bacon, and the kindness of the committee, because the action just taken has very greatly convenienced me.

Mr. Chairman and gentlemen of the committee, with your permission I will suggest, first, the issue to which my statement will be directed. I do this for the reason that, having carefully read the statements already submitted to you, I am led to the conclusion that many phases of railroad operation have been dealt with which are wholly irrelevant to the questions upon which you are to report. The chief, if not the only issue, as I understand it, is this: Shall Congress invest a commission, composed of men competent to perform the grave and responsible duties charged upon them, with the authority to fix a railroad rate in the stead of one established by the railways but which has been, after due hearing, condemned under the law as it now exists?

I shall not concern myself at this time with the constitutional power of Congress to make the grant of authority, inasmuch as the Attorney-General has put that controversy at rest. I shall not take up the various methods proposed for attacking the action of the Commission through the courts, save to insist that a rate made by the Commission

shall go immediately into effect, unless enjoined by a proceeding regularly instituted in a court of competent jurisdiction. There are differences of opinion upon this point among those who believe in the exercise of the proposed power, but they do not involve the essential relief expected from the measure. I confine myself, therefore, in the first instance at least, to a consideration of the general inquiry: Is it wise, in view of all the conditions which surround interstate transportation, to invest a commission with the authority to fix a rate in lieu of one found to be unlawful?

Consciously or unconsciously, many of the witnesses who have appeared before your committee, and who have spoken from the railway standpoint, have obscured the issue by the reiterated statement that railway rates are lower, as a whole, in this country than in any other. This is an attractive and gratifying fact, and from it the conclusion is drawn that further remedial legislation is unnecessary. I do not doubt the fact, but it has no pertinence in the present dispute.

Assuming that the rates exacted by a common carrier are not to be fixed at the pleasure of the carrier, but must be fair and reasonable when tested by the criterion of the public welfare, it is manifest that to ascertain the validity of a rate in the United States we must examine the results of traffic carried on here and the conditions under which the service is performed, rather than the rates prevalent in Europe, where the conditions are dissimilar and the results of traffic different. It is quite true that little complaint has been made of the unfairness of railway rates as a whole; that is to say, the aggregate income of all the railways has not been made the subject of much criticism. This is due, however, not to a belief that the railways do not exact more than a fair compensation for the carriage of passengers and freight, but because the discriminations practiced inflict so much greater injury that the graver charge has been made more prominent.

In order, however, to show you that the railways are not above criticism in the aggregate revenue which they receive for their service, notwithstanding the fact that the rate per ton per mile is less here than elsewhere, I beg to submit some statistics which I believe to be authentic. (In the figures I present I have disregarded, generally, fractions of miles and fractions of dollars.)

According to the preliminary report of the Interstate Commerce Commission on the income account of railways for the year ending June 30, 1904, there were 209,002 miles of main-line railway in the United States. The gross earnings of the operating companies aggregated $1,966,633,821. Assuming that 65 per cent of the gross earnings is a fair average for operation and maintenance, the net earnings of these railway properties for the year were $688,321,837. I am not overlooking the fact that the railways reported something more than 67 per cent of gross earnings as the cost of operation and maintenance, but if the practice of charging betterments into operation, which I have noticed in my own State, is prevalent elsewhere, the proportion I have mentioned is a liberal one for the railways.

It appears from the report to which I have referred that the operating railway companies had an income of $100,786,684 from sources other than operation, which added to the former sum makes a net

income over operation and maintenance of $789,108,521. Capitalized at 6 per cent, this income represents an investment of $13,151,808,689, a sum vastly in excess of the investment in the railway properties of the United States. It represents $62,927 per mile. It can hardly be doubted that rates which pay 6 per cent interest upon $62,927 per mile will stand a very considerable reduction before anything like confiscation occurs. Capitalized at 5 per cent, the net income above given represents an investment of $15,782,170,427, or $75,512 per mile.

If, however, the income of the railways from sources other than operation be excluded, and we take the net income from operation, namely, $688,321,837 (on the 65 per cent basis), and capitalize it at 6 per cent, the amount is $11,472,030,600, a sum still greatly in excess of the railway investment.

Accepting for the purposes of further illustration the railway reports, showing 67.75 per cent for operation and maintenance, and excluding entirely the income from other sources, the net earnings were, for the year ending June 30, 1904, $634,250,873. Capitalized at 6 per cent, we have an investment of $10,570,847,833, or $50,578 per mile. Capitalized at 5 per cent, we have an investment of $12,685.017,460, or $60,693 per mile. I reiterate that a system of railways paying 5 per cent upon $60,693 per mile, and with an additional income of $100,786,684, can not escape just regulation or excite sympathy by the suggestion that the rates are lower than in other countries.

From Poor's Manual I learn that at the close of the year 1903, when 203,000 miles of railway lines were operated, the outstanding bonds aggregated $6,591,735,850; the outstanding stock, at par, $6,207,869,995; the unfunded debt, $439,611,952; aggregating in all $13,239,217,797, or $65,217 per mile. I have not been able to secure like information with respect to the 6,000 additional miles reported to the Interstate Commerce Commission on the 30th of June, 1904, but assuming that the stocks and bonds and debts of the additional mileage were the same in amount, we have for the entire 209,000 miles a capitalization, including unfunded debts, of $13,630,519,797. Upon the basis of 65 per cent for operation and maintenance, the net earnings of the railways for the year ending June 30, 1904, would pay 5.8 per cent upon all the capital stock, bonds, and unfunded debt of the railways. Upon the basis of the net earnings as actually reported they would pay 5.4 per cent upon this entire capitalization.

I am sure that no one familiar with the subject will affirm that the railways of the United States have cost an average of $65,217 per mile. It is known, I think, by all men who have observed even casually the course of railroad construction and railroad capitalization that the overissue of both bonds and stocks has been gross and continuous. I do not attempt to say what the railroads of the country cost or what they are worth. I have had some instruction upon the matter, however, in my own State from the railways themselves, which may afford us some light.

We had in Iowa on the 1st day of January, 1904, 9,799 miles of main line. In July, 1904, the executive council valued the railroads of the State for taxation. They were valued at an average of

$23,485 per mile. In view of what has taken place since, I am inclined to think our valuation was too low; but, however that may be, the railways united in a most emphatic statement that it was much too high. It will be at once answered that the average value of the railways in Iowa is not as great as the average value of the railways throughout the country, and I am quite willing to concede that, tested by the gross earnings, the answer is good. Taking the gross earnings as a basis of comparison, I find that in Iowa for the year 1903 the gross earnings were $58,466,340, or $6,019 per mile. The gross earnings throughout the United States per mile for the year ending June 30, 1904, were $9,410; that is to say, the general gross earnings per mile were 56 per cent more than the gross earnings in Iowa. Taking our valuation per mile, which the railways agreed was excessive, and adding to it 56 per cent, we have $36,636 per mile, which, in my opinion, is not far from the actual cost of the railways as a whole.

Still continuing the Iowa basis, as augmented by the difference in gross earnings, and assuming that $36,636 per mile represent approximately the value of the railway property, we have as an aggregate $7,656,925,000. Taking the entire net income, including that from other sources than operation, it would pay upon this valuation 10.3 per cent. Excluding the income from other sources than operation, and accepting the railway reports as to the cost of operation and maintenance, the net income remaining, namely, $634,250,873, would pay 8.2 per cent upon the valuation.

I have passed through these computations and comparisons simply to show that the complacent suggestion that the railways as an entirety are doing business more for the benefit of their patrons than themselves is not well founded in fact. It is perfectly clear that they are exacting more than a fair return upon the capital invested in their properties. I do not forget the difficulty attending the reduction of rates, if they are reduced solely for the purpose of lessening the revenue, and I bear in mind the difference in the cost of performing service as between two competing lines, one of which is well developed and well situated and the other with inadequate construction and unfavorably located. Nevertheless, railway men ought not to appear before you and attempt to leave the impression with you and with the people that they have reduced rates to the lowest point of profitable operation. When the enormous increase in tonnage during the last few years is recalled, and when it is remembered that the density of traffic is the chief factor in economy of operation, we may put aside any fear that a commission with a full sense of its responsibility will, by a reasonable reduction now and then, bankrupt the railway companies.

It seems to me also that some confusion has been introduced by the witnesses before you upon another point. They have sought to make it appear that the authority proposed to be given to the Interstate Commerce Commission is an authority, or equivalent to an authority, to take up the whole subject of rates and make tariffs for all the interstate traffic of the country. The impossibility of five or seven men doing this work is graphically depicted, the revolution in business which it is claimed would ensue is painted in the liveliest colors.

and the whole scheme is denounced as thoroughly impracticable. If I thought it were necessary, in order to accomplish justice, that rate making should be entirely taken away from the railways and a commission charged with the duty of initiating complete rate schedules for the United States, I would not shrink from it. It would require no greater men nor more of them for the Government to do the work than for the railway companies to do it. But at the present time it is believed that adequate remedies for existing wrongs can be administered without giving to the Commission the power or imposing upon it the duty of general rate making, and neither the bill before the Senate nor any other of which I have heard proposes to require the Commission to generally establish rates. There is a vital difference between clothing a commission with authority to make a specific rate in the stead of one that has been condemned, after full hearing, and clothing it with authority to prepare and publish general rate schedules.

It is said, however, that if the Commission should change one rate it may become necessary for the railways to change others. This may be true in certain instances, but it would only be true with such other rates as were also unlawful, and so clearly so that the railways themselves would recognize the wrong and provide the remedy. There is nothing in the proposed measure to increase the number of complaints laid before the Interstate Commerce Commission. Its purpose is rather to provide a more effectual remedy in cases of the same character as those which have heretofore been referred to the Commission. If all existing rates were to finally come under the action of the Commission and new rates declared in their stead, it would simply be proof that all the rates were wrong; and if they are, the sooner they are righted the better.

I now venture upon an opinion, accompanied by some illustrations that have come under my observation, respecting the policy of giving the authority which I have attempted to define to the Commission. I can not believe that there is anything radical, severe, or unjust in granting the authority that the bill proposes. From the day the first common carrier began his initial journey the Government has asserted the right to determine, in some form, the reasonableness of the charge made for the service. A court and jury have had the jurisdiction to determine in each instance of carriage what should be charged, and to render a verdict and judgment against the carrier for any excess over a fair and reasonable compensation.

If conditions were still as simple as they formerly were the remedy thus afforded would be sufficient, but with the complexity of modern transportation, with the extent of territory covered by the carrier, the variety of traffic, the interchange between carriers, the original remedy long ago ceased to be of any value, and for years the Government has been trying to find something to take its place. Theoretically considered, the proposal to give to a commission the authority to fix a rate, after hearing, is much less radical, much less dangerous, than to give to a court and jury the authority to render judgment for an overcharge. Therefore, in the bill you have before you there is nothing essentially new; and if it passes, Congress is exercising only a part of the power which, from the beginning of our civilization, governments have exercised over common carriers.

I concur with many who have already been before your committee in saying that, even though the authority proposed is but a tithe of the power which the Government may exercise over railways without violating any of the established principles of good government, yet even that part should not be exercised unless there be good reason for so doing. Congress has already rendered the law as efficient as it can be, so far as secret rebates or secret discriminations of any kind are concerned, unless it be to meet and embrace, by further definitions, some of the ingenious methods now employed to grant favors, through private cars, terminal switches, and the like. What has not been done is to furnish a remedy, first, for an excessive rate, and, second, for open, published rates which discriminate between kinds of traffic and localities.

I have already given enough consideration to the first, and turn my attention to the second. That the existing law is fatally weak with respect to open discriminations, and that nothing will cure the defect save the authority in the Commission to fix a rate in the place of one rejected seems to me very clear. It is, however, claimed—as I understand the testimony heretofore given—that the railway companies themselves have, in the main, acted wisely in establishing these discriminating rates, and that if in any particular instance they have erred, they will be quick to rectify their error. At this point the issue is joined. I submit that it is not incumbent upon those who are urging Congress to extend the authority of the Interstate Commerce Commission to prove that the rates of which they complain are unjust and discriminating. It is only necessary to show a reasonable number of complaints, to show that they are made in good faith, and that they are of long duration. If my State as a locality, or any smaller community as a locality, or the men interested in any particular traffic, have a controversy of importance with the railway companies respecting the rates which govern their business, they have a right to expect that Congress will create some tribunal, if there be not one already at hand, to settle and determine that controversy as between them and the railways. It is intolerable to ask them to submit their controversies for final adjudication to their adversaries. To so hold is for the Government to abdicate one of its highest functions, and to say that Congress has no more to do with common carriers than it has with private industrial enterprises. The people of the country are absolutely dependent upon the railways for transportation, and it is not more important to establish courts for the determination of civil controversies and the punishment of crimes than it is to provide a tribunal which can see to it that competitors in business have a "square deal" in reaching their markets.

Do you doubt that there are enough complaints of discrimination, presented in good faith, of the highest concern to those who make them, to warrant you in giving the Commission the authority to investigate the complaints and to administer justice? I do not know, save through general publications, how it is elsewhere, but I do know how it is in my own State.

I take, for example, Dubuque, the home of the senior Senator from Iowa—a city filled with energetic men who want to do business in the surrounding territory. It wants to sell its goods and manufactures, say, in southwestern Wisconsin, in towns from 50 to 100 miles distant.

Chicago reaches these same towns from a distance of 200 miles or more at the same rate which Dubuque must pay. It may be that the railway companies have a defense for such seeming injustice, but we do not want them to pass upon its validity.

Dubuque wants to buy many things from the South, but it must pay a much higher rate than such cities as Milwaukee, Madison, Chicago, Rockford, and Freeport. It does a large business in southern Minnesota and South Dakota, but it has to pay practically the same rates as its competitors, Chicago and Milwaukee, although the distance is little more than half as great. It sometimes desires to reach the Pacific coast territory, and it then discovers that the Atlantic seaboard cities can reach the territory at the same rates.

It seems to me that these things are wrong. They may possibly be right, but what a farce it is to try the case before the railway companies that made the rates.

I take another instance. There is in Fort Dodge, the home of the junior Senator from Iowa, a company manufacturing boots and shoes. It sells its product all over the North and West. In every instance in which it meets its Chicago competitor at an equal distance from Chicago and Fort Dodge it pays a higher rate than the Chicago manufacturer, and when it gets into the far West it must pay exactly the same rate as does its Boston competitor. This hurts Iowa, and it is not strange that an Iowa manufacturer so situated feels the need of an impartial tribunal that can and will make a just rate. What I have said respecting the two instances is true in a greater or less degree of all the manufacturing business that we attempt to do with the people of other States.

I quote another illustration: A man in Nebraska buys cattle in the western part of his own State or in Wyoming or in Colorado. He ships them to some feeding point in Nebraska, fattens them, and ships them to Chicago at the through rate from the original point of shipment, with a slight charge added for unloading.

A man living in the western part of Iowa buys cattle at the same point, to be fed on his farm in Iowa and then shipped to Chicago. He must pay, first, the rate from the original point to the Mississippi River, even though he unloads them within a mile of the Missouri River. He fattens them and ships them to Chicago, and must pay the rate from his own town to Chicago, the two rates being in the aggregate much greater than the rate required of the Nebraska feeder. There can be no justice in such an adjustment of rates, and the Iowa cattle feeders very naturally want an opportunity to appeal to a commission for relief.

I ought not to consume your time in citing particular instances of discrimination. Bear with me, however, while I make a general observation. Iowa is an agricultural State. Nothing can dispute her claim of superiority in that respect. Why is it that she is not also a manufacturing State? Her chief raw materials are corn, cattle, and hogs. It is, I understand, a sound rule in industrial economy that, if other things are equal, the manufactory should be as close to the raw material as possible. There is an additional reason which commands the proximity of the packing houses to the fields in which the live stock is grown. The waste involved in long

hauls, through shrinkage, is a crime if needlessly incurred. Iowa is an ideal spot for the manufacture of her own raw materials. She has a peaceful, law-abiding, energetic population, accustomed to work, and happy only when working. She has an abundance of as cheap fuel as can be found in the country. Nevertheless, instead of manufacturing our live stock into food and by-products, as we should do, we ship about 80 per cent of our hogs and 90 per cent of our cattle beyond the State to be manufactured in other places. Why is it? There is but one answer: Badly adjusted railway rates. Iowa wants just what the whole country wanted when a protective-tariff law was adopted—diversification of industry. Iowa wants more consumers of agricultural products who are not also producers of these products living within her borders. The railways have taken away our chance. We are trying to reclaim it.

I mention these things not because I expect you to take up and determine the complaints that we have against existing rates, but to convince you that we are entitled to a tribunal that can and will examine them and award to us whatever relief justice and fair dealing may require.

If there had been in my mind a lingering doubt about the wisdom of conferring the proposed authority upon the Commission, the statements which have been made before your committee by men connected with the railway companies would have completely dispelled it. Over and over again it has been repeated to you that rates are not made with reference to any known principle. Distance is little considered, the cost of service is little consulted. These railway men have with great candor declared that rates have been made and will continue to be made with reference only to their view of the welfare of the territory which their lines supply. That means that the rates have been and will be so adjusted as to afford the largest revenue to the railway companies. It means that the railway companies have exercised the power, and insist upon its continuance, to take away the natural advantages of one State or locality or city and confer them upon another State, locality, or city. It means that railways have assumed the prerogative of determining the kind and extent of traffic that shall be carried on between different parts of the country. It means an artificial business life, based upon the discretion and judgment of railway companies.

I admit that a distance tariff throughout the country would be inadvisable, I concede that the cost of service must sometimes be subordinated to the public good, but I deny that the railway companies should exercise a power so vast that, if left untrammeled, the authority of Congress sinks into insignificance when compared with it. It is just as repugnant to the principles of good government that the railway companies should thus lift up and depress communities as it would be to allow every producer in the United States to fix for himself the duty levied upon the import of a like product.

The Constitution of our country forbids the levying of duties in commerce between the States, and yet we permit the railway companies to do an equivalent thing when they fix rates founded only upon their desire to stimulate one kind of traffic and destroy another kind—rates which equalize advantages between competitive commu-

nities, which turn business from the natural channels of commerce into artificial ones.

Do not misunderstand me. It may be thought wise to ignore distance, discard cost of service, and treat our country as though it were a single point, so that each producer could reach every market on even terms with every other producer and each distributer could reach his customer on even terms with all his competitors. I am not a disciple of that theory of transportation, but I do not argue the question. I only say that if it is the purpose to develop the country in that way the vast arbitrary power involved in such a scheme must be exercised by the Government and not by the railways. I grant that when this duty is undertaken you set in motion a tremendous force, but it is easier to control the rate than to operate the railway, and to me it is clear that if Congress does not in some form make the rate it will in the end take the railways. In our State we prefer the first of the alternatives.

Having looked at the matter from my own point of view, I ask the forbearance of the committee while I refer to the case as it has been put before you by the railways. Without making any invidious comparisons I think you will agree with me that the railway side will be found in its greatest strength in the statements of Mr. Tuttle, of the Boston and Maine; Mr. Hill, of the Great Northern; Mr. Hines, of the Atlantic Seaboard, and Mr. Mather, of the Rock Island.

These gentlemen agree that at the present time we have a very incompetent Commission; that their lust for more power blinds them to the power they have; that they have done many things which they should not have done, and have left undone many things which they should have done. I call your attention to these criticisms not for the purpose of defending the members of the Commission, for I have not examined their work with sufficient detail to know whether there is a basis for such emphatic and concurrent condemnation. I do so for the purpose of asking what that has to do with the controversy in which you are engaged? The whole subject is in the hands of Congress. There is no obligation to keep either incompetent or unfit men in office. There are good men in the country whose services can be secured. We all recognize that the duties to be performed, if the authority we ask be given, are of the utmost gravity and demand the best skill of the land. But it is exceedingly illogical to say, or to leave it be inferred, that because it is thought that the Commission as now constituted will not wisely exercise the power, therefore it ought not to be extended. They might just as well argue that because we have had at times poor judges the judicial system should be abolished.

These four witnesses, as well as all others, seem to think the present law is all right, and they agree that it has accomplished excellent results; and yet, as I remember it, the railways were just as bitterly opposed to the measure when it was passed in 1887 as they are to the proposed extension of authority. They made the same gloomy prophecies about its effect upon railway property that they now make with respect to the effect of this amendment upon railways. Their judgment is that of an advocate. They are keen, strong men, and they look upon the property as their own, and they resent every interference with it.

I do not know of any regulation ever proposed that did not meet the active hostility of railway operators, unless it be the law passed in 1903, which I regard as one of the best laws in existence, but which, for obvious reasons, did not encounter the opposition of the large systems of railways.

Mr. Hill suggested to you the other day that you might busy yourselves in providing further protection for the lives of passengers and employees; but, apparently, he had forgotten that the railways did not willingly adopt the automatic coupler. They fought the application of the air brake to freight trains. They have always stood against the limitation of the length of time a man should continuously work, and only last year when, in view of some horrible accidents in my own State, brought about by the employment of mere boys, without sufficient training, as telegraph operators, we sought to introduce some precautions the railways united all their power and defeated the effort. These things are true, not because railway managers lack humanity, not because they lack the qualities of high citizenship, but because they want to manage their property without let or hindrance, and they are always on guard to prevent, if they can, any invasion of their authority.

Men who oppose by tradition and instinct all remedial legislation which affects this species of property can not be accepted as fair judges of the merits of a particular measure.

Aside from the legal questions, which I do not intend to consider, the four gentlemen to whom I have referred objected to the authority on the part of the Commission to make a rate—

First. Because a rate made by the Commission would be inelastic, or, as some of them expressed it, inflexible, and that therefore the railways could not meet the changing demands of commerce.

As I view it, the objection is without merit. Comparatively few of the rates would ever be fixed by the Commission. The rates fixed would be maximum rates, and when occasion required the railways could reduce them at their own pleasure and to any point necessary to accomplish their purpose, and as often restore them. There would be but one limitation, viz, the avoidance of discrimination. The only inflexibility brought in by the Commission would be that the high point should not be exceeded. As I remember the testimony, not a single instance or illustration has been given where an emergency necessitated the sudden raising of the rate.

Practically speaking, the rates would be just as flexible as they are now, unless to change them would unjustly discriminate. I assume that the railways do not want to violate the law.

Take the three cases made prominent by Mr. Hill:

(*a*) The shipment of locomotives. It is not likely that the Commission would ever be called upon to fix the rate on locomotives; but suppose it were so fixed. Mr. Hill could reduce the rate or carry them for nothing if he wanted to, without violating the order of the Commission.

(*b*) The shipment of flour and other commodities to the Orient. Again he wanted to reduce the rate, and he would be at perfect liberty to do so. His real difficulty was in the publicity of the rate, a thing with which the bill you have under consideration has nothing whatsoever to do.

(*c*) The shipment of lumber from the Pacific coast at 40 cents per hundred. If he had a right under the law as it now is to make a rate from the coast to St. Paul as low as the rate from a point midway to St. Paul, he could just as freely reduce the Commission's rate as his own rate, and therefore the situation would not be made inelastic by the proposed law, but by the present law, with which he says he is wholly satisfied.

The difficulties which the railway men see along this line are imaginary, not real. There will still be left to them the highest motives for energy and a wide opportunity for capacity to win its accustomed victories.

To emphasize my conclusion that their fears are not well founded, I beg to recall the examination of Mr. Tuttle and Mr. Hines, conducted by Senator Clapp. They agreed that should a court, at the instance of the Commission, enjoin a rate the railway would at once accept the spirit of the decree and feel bound to put in and observe a rate which would avoid further proceedings. I think all the witnesses, unless it be Mr. Hill, concur in saying that Government rate making to this extent is a good thing. Mr. Hines, and possibly others, are of the opinion that Congress could frame a law that would give the court the right to fix the rate for the future, and both he and Mr. Tuttle say that such a law would be wise. (Hines, Apr. 27, p. 30; Tuttle, Apr. 17, p. 191.) I venture the opinion that the courts could not be clothed with such authority. However, I have not mentioned the matter to enable me to express an opinion upon the law, but to suggest that rates fixed in this way would be a great deal more inflexible than rates fixed by a commission, and therefore the apprehension with which the railways regard a Government rate must arise from some other cause than inflexibility.

Second. That to give the Commission rate-making power would so far destroy the confidence of investors that further capital could not be obtained with which to build new roads or better old ones.

If I believed that this objection had merit in it I would be here urging you to deny the authority asked rather than to grant it. All sensible men know that their own welfare and prosperity are inseparably associated with the welfare and prosperity of the systems of transportation; and it would be a great deal better to suffer the wrongs that are believed to exist than to cripple the railways, and so prevent their growth to meet the imperative demands of our constantly increasing commerce; but I do not believe that the confidence of the people having money to invest would be either destroyed or impaired. I have heard the same statement ever since the Government began to touch railways by way of regulation, but it has never been verified by experience. Confidence, instead of lessening, has grown, just as the country has grown.

What possible motive could a commission, appointed by the President and approved by the Senate, have to reduce or adjust rates so that money put into railroads would not earn a fair return? I have heard over and over again the same objection with regard to gas companies, water companies, electric-light companies, and street-car companies when the Government undertook to fix their charges; but

the money to enlarge these public utilities keeps pouring into betterment and construction.

The people who use railways want to pay a fair price for the service, and they would be prompt to repudiate any attempt to lessen the efficiency of their only means to carry on business. No commission would establish rates that would reduce the income below a point that would furnish ample inducement to investors in comparison with other securities. There are some promoters who are, and ought to be, afraid of their Government, but honest men with money to invest are not.

There is a vein of censure running through some of the statements not very complimentary to the people who are standing for this measure. It is mingled apparently with a feeling that the country is ungrateful to the railroad men who, as pioneers, projected their lines through desert and wilderness, gave value to our farms, created our business, and put pleasure into life.

I yield to no man in my admiration for the men who so courageously carried out these mighty enterprises, but they are entitled to no more than the brave and hardy souls who have peopled and enriched the western empire. To be candid, they are less worthy, for they encountered less risk. The truth is that, so far as the West is concerned, men built railroads not to help future generations nor to develop the country, but either to secure immense land grants bestowed by a generous and enlightened Government or to make profit out of the construction of the improvement by the sale of an exaggerated issue of stock and bonds.

The Government owes the railways just what it owes all its citizens—exact justice, tempered with neither fear, favor, nor prejudice.

Gentlemen, I am at your disposal.

The CHAIRMAN. Governor, I gather from your statement that you agree that in the first instance the railroads generally should make the rates?

Mr. CUMMINS. Yes, sir.

The CHAIRMAN. And in case of complaint a remedy should be sought at the hands of the Commission?

Mr. CUMMINS. That is, those who are aggrieved seek a remedy at the hands of a commission; yes, sir.

The CHAIRMAN. In the interest of expedition and preventing delay why would it not be better to go to the courts directly rather than to the Commission with complaints, letting the Commission bring suit if it can not succeed in arbitrating or settling the dispute between the shipper and the railroad?

Mr. CUMMINS. There are two reasons why I think the other course is the better.

The CHAIRMAN. Would not that save time?

Mr. CUMMINS. No; I think it would not save time. I think it would prolong the controversy very greatly to appeal to the courts in the first instance. Nor do I believe that you can frame a law that will enable the courts to grant the relief which the case requires.

The CHAIRMAN. Do not the courts, upon appeal from the Commission, grant relief?

Mr. CUMMINS. I do not think there can be any appeal from a com-

mission to the courts. That is a word that is used sometimes, but, I think, very inaccurately. My view of it, Mr. Chairman, is this—I am not speaking for this present bill; I am speaking on the general subject.

What I think should be done is simply to grant to the Commission, or to a commission, the power, upon investigation and hearing, to fix a rate, and then allow anyone aggrieved by that action to attack it according to the established method of judicial procedure.

The CHAIRMAN. That is the case now precisely.

Mr. CUMMINS. No, sir; I do not quite agree with you that that is the case now.

The CHAIRMAN. It is near it. What I am aiming to get at is your view upon the question whether or not it would be in the interest of facilitating the settlement of questions that arise under the interstate-commerce law to go directly to the courts rather than have the Commission act as a judicial tribunal, having a hearing, with the right of review by the courts.

Mr. CUMMINS. I am of the opinion that it would not facilitate the settlement of controversies. In the first place, I am not in favor of granting to the Commission judicial powers, and I would hope that the great majority of instances in which the Commission would condemn one rate and fix another would be final with the Commission; that there would be no resort to the court in order to set aside the action of the Commission.

The CHAIRMAN. That is the case now. The Commission has settled 1,500 disputes between the railroads and the shippers, which is a very happy outcome, we think.

Mr. CUMMINS. Very; and I should hope that that would be true in the future.

The CHAIRMAN. Where the Commission can not settle a dispute between carrier and shipper, then would it not be more direct and better facilitate matters to let the Commission begin action in the courts to set aside, say, an excessive rate complained about?

Mr. CUMMINS. If your purpose were merely to condemn an existing rate, it might be true that it would be more speedy to apply at once to the court for its decree; but that is not, as I understand it, the purpose for which those with whom I agree are urging this amendment. Their purpose is to clothe the Commission with authority not only to condemn a rate, but to fix one. With that power, in my opinion, the courts have nothing whatsoever to do and can have nothing whatsoever to do. The courts, upon proper proceedings being instituted, can set aside or enjoin the action of the Commission. But as I look at the law—it has been some years since I practiced my profession—that is the extent of the jurisdiction which can be conferred upon our courts.

The CHAIRMAN. Is it your judgment that the Commission should be left with the power to fix finally a substitute rate without appeal?

Mr. CUMMINS. Not in the terms you state it. My view is that Congress ought to confer upon the Commission the power to fix a rate in the instance we have already been discussing; then if the railroad company believes that the Commission has acted unlawfully, it may file an appeal in any court of competent jurisdiction, and, if the error of the Commission is so manifest as to warrant a temporary

injunction, the rate can be suspended under the injunction until the final hearing of that case. If, however, the action of the Commission is not so clearly wrong as to warrant the court in interfering by way of permanent injunction, then I think the action of the Commission should stand until the final hearing of the case.

The CHAIRMAN. The final hearing only?

Mr. CUMMINS. Final hearing by the court in which the petition was filed to set aside the action of the Commission.

The CHAIRMAN. You would want the rate, however, to be made effective by the Commission?

Mr. CUMMINS. After such reasonable time as to enable the railway company, for instance, to institute the proceeding. I do not think there ought to be any snap judgment. I do not think the rate ought to go into effect until the railway shall have had ample opportunity to make application to the court for relief.

The CHAIRMAN. The court could only interfere in a case like that where the rate was confiscatory, it seems to me.

Mr. CUMMINS. While there has been a great deal of development upon that subject in the last twenty-five years, I agree that there were formerly suggestions, or even decisions, by the courts which indicated that if the rates would afford any revenue whatever they would not be suspended or interfered with by the courts; but I believe that doctrine to have very much mitigated, and I am not prepared to admit that the court should not set aside a rate unless it found it to be absolutely confiscatory.

The CHAIRMAN. I believe you thought that comparisons between railroads, in foreign countries, subject to government regulation, and our system were not pertinent?

Mr. CUMMINS. It is not an illustration from which the conclusion can be fairly drawn that the Commission ought not to have the power to fix a rate; I think that was the suggestion I made.

The CHAIRMAN. A comparison between rates where government regulation is in vogue and rates in this country, where it is not, it seems, to me would educate us and aid us in coming to a conclusion, would it not?

Mr. CUMMINS. That would be true if there were any parallel to be drawn between the conditions under which the railways of England, Germany, or France render their service and the conditions under which the railways of this country render their service; there is no parallel.

The CHAIRMAN. You hold there is no parallel—no comparison to be made?

Mr. CUMMINS. I think there is none; I think the true inquiry is, What do the rates now in force yield to the railway companies?

The CHAIRMAN. We have proceeded in this investigation somewhat upon the line of making inquiries in countries having government regulation of rates and comparing the results with those in our country. Are you familiar with what has been the average reduction in freight rates in the United States in the last thirty years?

Mr. CUMMINS. I could not name the proportion of reduction; I believe that, until within comparatively recent period, there has been a very great reduction.

The CHAIRMAN. The statistics are, I believe, uncontroverted that since 1870 the railroads themselves have reduced the average rate from 2 cents per ton mile to 7.6 mills per ton mile without any interference or rate regulation whatever.

Mr. CUMMINS. I have no doubt that the fact you state is correct.

The CHAIRMAN. Is not that a very gratifying result, and could regulation by the Government have done better or as well?

Mr. CUMMINS. It is a very gratifying result; it makes any American proud of his country.

The CHAIRMAN. How much further do you, as a business man, as a lawyer, and as a man of public affairs, think the railroads can go in the direction of reducing the average rates?

Mr. CUMMINS. I do not know.

The CHAIRMAN. How much further can they go and continue to do business, like other people or corporations?

Mr. CUMMINS. Under existing conditions they can not reduce their rates, on the whole, greatly; my reference to that subject was intended to enforce this thought: That it was irrelevant for a railway company to appear and say "You ought not to authorize the Commission to fix a rate, because our rates are already lower than they are in foreign countries." I think the chief complaint is not with respect to the aggregate revenue of railways, but with regard to its distribution, with regard to the adjustment of rates.

The CHAIRMAN. If the railroads are not permitted to make a fair and reasonable profit, they will go out of the business, and no more railroads will be built. Is not that true?

Mr. CUMMINS. So far as I am concerned, I should be perfectly willing to see them make more upon the capital invested in their property than Mr. Hill the other day said was quite sufficient.

The CHAIRMAN. And therefore should we not be careful in legislation, that we may not in some way impair the ability of railroads to make a fair and just return on their investment?

Mr. CUMMINS. You should be exceedingly careful with the subject you have in hand. It is a great subject. But, being careful, if you reach the conclusion that the welfare of the country requires this power on the part of the Commission, then you ought to grant it.

The CHAIRMAN. Railways, it is said—and, I believe, on good authority—would have to raise many millions of dollars—perhaps in the next ten years $1,000,000,000—to provide proper facilities to meet the increasing business of the country; in other words, that the traffic of the country will, in all probability, double. To meet this public demand and the necessities of the railroads will call for more facilities of all kinds—additional tracks, better terminal facilities, and all such things. If you in the least should impair the earning capacity of the roads or let the people believe that the ability of the railroads to earn a fair return was being lessened, then the railroads would not be able to borrow the money, would they?

Mr. CUMMINS. I do not know that it could be affirmed that the least impairment of confidence would prevent the railway companies from borrowing the money. It may be said that if all confidence is destroyed they could not borrow the money. But my proposition is that the proposed legislation would not impair the confidence of the people who have money invested in these properties.

The CHAIRMAN. You do not think, then, that a man having all his fortune invested in a railroad will be as well satisfied if he manages that property himself as if the property were managed by a body of men who have no interest whatever in the road, no fortune invested in it, and no responsibility in its management?

Mr. CUMMINS. It is pretty hard for me to put myself in the position of a capitalist, Senator. I have never had the good fortune to occupy that attitude. I have seen this country develop for a good many years. The Government is reaching out all the while, taking on additional functions, attempting to adjust the relations of the people, and, so far, I think, wisely; and I think the confidence of moneyed men has not been impaired yet in any legitimate security. I can not believe that, after this first flurry is over, and the railroad men themselves cease to make these doleful prophecies, there would be any sensible or appreciable difference in the money markets with respect to bona fide and honest railway securities.

The CHAIRMAN. Mr. Hill in his statement said he did not think the railroads, if a commission should be empowered to fix rates, would be able to borrow money. You saw that statement?

Mr. CUMMINS. I saw it.

The CHAIRMAN. You do not share that view?

Mr. CUMMINS. I do not. Mr. Hill is a very great man, but just now he does not feel well toward the Government of his country, and I am afraid he is pessimistic.

The CHAIRMAN. How many freight rates are there in the country?

Mr. CUMMINS. I do not know. There are many, many thousands, however.

The CHAIRMAN. Do you know how many complaints have been made in the last five years?

Mr. CUMMINS. To the Commission?

The CHAIRMAN. Yes, sir.

Mr. CUMMINS. I do not.

The CHAIRMAN. Or how many have reached the courts?

Mr. CUMMINS. I do not.

The CHAIRMAN. Do you think the law, as it stands now on the statute books, is about as efficient and strong as can be drawn to prevent discriminations and rebates?

Mr. CUMMINS. I do. I have heard it said that it was necessary to change the law in order to meet certain devices that have been resorted to in recent times. I do not concur in that view. I believe the law meets and covers them now. However, it might be a little clearer in that respect if new definitions were added.

The CHAIRMAN. The sole question, I believe, that disturbs the people is the power to make rates by the railroads, on the ground that rates may be made too high. Do you, or not, think that there should be some power over the managers and owners of railroads to protect the public against unreasonable rates?

Mr. CUMMINS. While I believe that the railroads are making quite as much, if not a little more, than they ought to make, in view of the capital they have invested in their enterprises, yet, if that were the only question, I do not believe there would have been any demand for additional legislation. The objection entertained by those with whom I am associated is that the railways undertake to develop this country according to their views of the way it should be developed.

To put in concretely, the railways—unconsciously, not maliciously, at all—have decreed that Iowa shall remain an agricultural State, and their rates are so adjusted that it will so remain. That is the complaint that I, on behalf of my State and of those at least who believe with me, make of the present law.

The CHAIRMAN. Do you think a railroad reaching a great many localities in a given territory, competing with other localities on other lines, could find it to its interest to oppress—or not to help, if you please—every locality on its line, by the best facilities that can be devised and by the lowest rates?

Mr. CUMMINS. As I say, I grant the utmost good faith on the part of the railway managers. They do what they believe to be best for our State, if it happens to be best for themselves.

The CHAIRMAN. Can you separate the interests of the railroads from the interests of the particular locality on that railroad?

Mr. CUMMINS. No, sir; they are inseparably bound together. But the railways can determine what is best for themselves, and I do not want them always to determine what is best for us.

The CHAIRMAN. Why do you say that the railroads have decreed that Iowa shall not become a manufacturing State?

Mr. CUMMINS. I reach that conclusion simply because all our manufacturers when they attempt to reach beyond our own State meet rates that so discriminate against them that they can not compete with manufacturers elsewhere.

The CHAIRMAN. In the first place, does not your agricultural products get a low rate to the Gulf ports and Atlantic ports?

Mr. CUMMINS. Of course; that has nothing to do with manufacturing.

The CHAIRMAN. But first I want to get at that.

Mr. CUMMINS. I will not say that we have been the beneficiary, but whoever owns or buys the grain has recently been the beneficiary of a very low rate on grain to the Gulf ports.

The CHAIRMAN. And to the Atlantic ports?

Mr. CUMMINS. And to the Atlantic ports, following, of course, the reduction of rates to the Gulf ports.

The CHAIRMAN. Has not that been beneficial to the producers and farmers of Iowa?

Mr. CUMMINS. I think it has; but not at all to the extent that has been claimed for it by some people.

The CHAIRMAN. Do not the manufacturers of your State have the same advantages of rates that the manufacturers have in other States?

Mr. CUMMINS. I am not prepared to answer the question as breadly as you put it. I say that the manufacturers of our State have not the same chance to reach their markets as have the manufacturers in surrounding States.

The CHAIRMAN. Missouri, if you please?

Mr. CUMMINS. I do not know anything about Missouri. I know about Illinois, and I know about the States east of Illinois, but what is true of Missouri I can not say.

The CHAIRMAN. Do you think that the railroads have agreed among themselves or desire to favor Illinois or any other State more than they do yours; and, if so, for what reason?

Mr. CUMMINS. I have not charged that. I think the railroad fel-

ows are the best fellows in the world. They have not conspired against anybody. But their view of the development of the country has brought about this result. What I protest against is accepting their view instead of yours—the Government's view.

The CHAIRMAN. Illustrate that, if you please, by some rates.

Mr. CUMMINS. Take the case I put. From Fort Dodge, the home of the junior Senator from Iowa—there is at Fort Dodge a manufactory of boots and shoes.

Senator DOLLIVER. Mr. Tuttle testified that they sent boots and shoes from Lewiston, Me., to San Francisco for the same price as from Lewiston to Boston.

Mr. CUMMINS. Certainly.

Senator DOLLIVER. That would involve a very considerable readjustment of the boot and shoe business.

The CHAIRMAN. Why can not the Fort Dodge manufacturer send his goods to San Francisco and beat the Massachusetts shoemaker?

Mr. CUMMINS. I will first take up the Chicago competitor, and then Boston. Suppose he wants to sell his goods in Minnesota, or Wisconsin, if you please, at the same distances from Chicago; of course it costs the Fort Dodge manufacturer a little more to get the raw material than it does the Chicago manufacturer, and he is at a little disadvantage there, but otherwise, if he is 200 miles away from his customer and the Chicago man is 200 miles away from his customer, each ought to be able to send his goods to his customers as cheaply as the other.

The CHAIRMAN. It is a war between localities.

Mr. CUMMINS. Always.

The CHAIRMAN. You think, under the law and the practice, that Chicago is getting an undue advantage over Dubuque and Cedar Rapids?

Mr. CUMMINS. In that particular instance, yes; Chicago has the advantage. I want to emphasize that proposition. It is a struggle between communities. I believe that every community should have its natural advantages in trade, and if those natural advantages are ever taken from that community it ought to be for the public good alone. Who shall determine what public good requires? I would rather have a commission appointed by the President and confirmed by the Senate to determine that question than to leave it to the railways. That is the whole question.

Senator DOLLIVER. One of our friends from Omaha had that same opinion until our Iowa commissioner led the Commission into a judgment that was against the interests of Omaha, then he lost confidence in the Commission altogether.

Mr. CUMMINS. Undoubtedly. You can not determine so great a question by the experience of any particular complainant.

The CHAIRMAN. How can the Commission adjust this particular condition to which you refer?

Mr. CUMMINS. It can adjust it by changing the rate.

The CHAIRMAN. That is to say, if Chicago has a certain rate you want to feel that your country should have the same rate?

Mr. CUMMINS. Yes, sir.

The CHAIRMAN. Would you put that on a mileage basis?

Mr. CUMMINS. No, sir.

The CHAIRMAN. How could you determine that question?

Mr. CUMMINS. I would determine it just exactly as the railroads have. I would not reach the same conclusion always.

The CHAIRMAN. The railroad methods of fixing rates do not suit you?

Mr. CUMMINS. No, sir; but they proceed upon the right view. They are wanting to build up the country, they say, and its traffic here and there, according to the best interests of the country. Instead of taking their judgment I would rather have yours or the judgment of some impartial man as between the various localities.

The CHAIRMAN. Impartial as between communities? Each railroad must serve the communities along its line. The railroads of Iowa want to serve Iowa localities as against localities in Missouri, if you please; it is to their interest to do it; and there is no hostility that I can conceive possible against Iowa interests.

Mr. CUMMINS. I have never suggested that there was any intentional or conscious malice on the part of the railroads against my State. But they may make a great mistake when they come to levy the duty which our manufacturers shall pay, as compared with the duty which the Chicago or the Boston manufacturers must pay.

The CHAIRMAN. Can you suggest any other basis than a mileage basis that will carry out your views?

Mr. CUMMINS. Yes, sir.

The CHAIRMAN. What is that?

Mr. CUMMINS. The basis of the cost of service as modified by the good of the people.

The CHAIRMAN. That is the position you took in the Packing-House Cases?

Mr. CUMMINS. Yes, sir.

The CHAIRMAN. I will come to that after a while. If there are existing injustices and abuses; why do not your people complain to the Commission and get relief?

Mr. CUMMINS. I do not know. I suppose it is because our people believe that the Commission is powerless to render them the relief that they think that they ought to have.

The CHAIRMAN. Good lawyers will not advise them in that way, nor would the Attorney-General, or the district attorneys of the United States. As I understand it, if complaint is properly made, these officers will enforce the law.

Mr. CUMMINS. If what you say is true in its fullest extent, it is equivalent to saying that the law has no need of amendment.

The CHAIRMAN. Not at all, as you will see before we get through. We shall amend it, and in many particulars it will meet your approbation. You trust the committee a little.

Mr. CUMMINS. I trust it implicitly; I must.

Senator FORAKER. I understood you to say, as to rebates and discriminations, that you thought the law, as it now stands, was as nearly perfect as we could make it.

Mr. CUMMINS. I do not know that any further amendments could make it more stringent than it is now.

Senator FORAKER. You refer to section 3 of the Elkins law, I suppose?

Mr. CUMMINS. Yes, sir. I am not quite so optimistic as some of the gentlemen who have appeared before you. I do not think rebates and discriminations ever will disappear wholly, and I say frankly

that I do not believe they ever will disappear so long as there is the element of competition. In business you may find some way of awarding favors, but I do not know of any way in which you can make the law more perfect on that point than it is now.

The CHAIRMAN. You do not know, of your own knowledge or by hearsay, of any existing discriminations and rebates?

Mr. CUMMINS. Not of my own knowledge.

Senator FORAKER. He has been telling us of discriminations between localities.

Mr. CUMMINS. Not secret rebates.

Senator NEWLANDS. As I understand, the Governor says that the law is ample as to secret rebates and discriminations, but not ample as to open and public discriminations.

Mr. CUMMINS. You have stated my view accurately. The secret rebate is already covered as fully as I think the law can cover it. The open discrimination, which is observable in the published and acknowledged rates which are open to all who live in the community to which they apply, is not sufficiently met by the existing law, for the existing law only provides for the condemnation of the existing rate, and does not provide for the substitution of a fair and reasonable one.

The CHAIRMAN. You do not think that any power given to the Commission to fix a rate would tend in the least to correct discriminations, rebates, and abuses of that kind?

Mr. CUMMINS. Not secret rebates and discriminations.

The CHAIRMAN. Or any other?

Mr. CUMMINS. I do. Otherwise I should not be here urging the committee on that point.

The CHAIRMAN. The power of the Commission to change a rate on complaint means in fact the power to reduce a rate, because the Commission would not be likely, on complaint of a rate being too high, to increase it.

Mr. CUMMINS. I think it is quite true that when you give the Commission the power to fix a rate instead of the one condemned you give it the power either to raise or lower the rate.

The CHAIRMAN. Do you not think that that power will always be exercised in the direction of reducing the rate?

Mr. CUMMINS. I do not.

The CHAIRMAN. If a man complains that a rate is too high, would the Commission make it higher?

Mr. CUMMINS. He could not complain that the rate for the other fellow was too low.

The CHAIRMAN. I am speaking of an excessive rate.

Mr. CUMMINS. If he complains merely of an excessive rate, then the power would be for a reduction of the rate.

The CHAIRMAN. The exercise of that power would tend to the reduction of rates, and would not the reduction of rates necessitate generally and through a long period the reduction of expenses and cost of operation? And what effect would that have upon wages and securities, stocks, and bonds? Answer the whole proposition.

Mr. CUMMINS. Your question has several phases. I do not believe that the power that is sought to be given to the Commission would result in a general reduction of rates. I do believe it would result in a more equitable apportionment of rates. I do not believe that it

would result in increasing the expenses of operation. I am confid that it would not result in the reduction of the wages of employees.

The CHAIRMAN. You say it would not result in a general redu tion of rates. It is believed that there is a correlation between c rate or a number of rates and many other rates. If you reduced o would it not necessarily follow that you would have to reduce a gr many others?

Mr. CUMMINS. No, sir. I say it would not necessarily follow. might follow in a particular instance.

The CHAIRMAN. Suppose the rate between Dubuque and Chica should be reduced on one railroad. Would that not affect the r on every other road, and, by correlation, all the rates in that sectio

Mr. CUMMINS. It depends on the commodity on which it is reduc

The CHAIRMAN. Say upon grain or live stock.

Mr. CUMMINS. Yes; it would.

The CHAIRMAN. On iron ore or nails?

Mr. CUMMINS. We ship neither from Iowa to Chicago.

The CHAIRMAN. If you reduce the rate between Chicago and A lantic ports or Gulf ports, would not that necessarily reduce all t rates to those ports from your section?

Mr. CUMMINS. If the railway companies insist upon preservi the present equilibrium what you say would be true, but it is t present equilibrium against which we complain.

The CHAIRMAN. Who maintains that?

Mr. CUMMINS. The railway companies.

The CHAIRMAN. What do you mean by equilibrium? Do y mean differentials?

Mr. CUMMINS. I mean the equilibrium of rates; for instance, fr the West to New York, to Philadelphia, to Boston, to Baltimore, New Orleans, or to Galveston. If the railway companies insist up maintaining the exact relation which now exists and they were co pelled to reduce one rate, then they must reduce them all.

The CHAIRMAN. For this reason, if you agree with me: That t railroad giving the lowest rate between two points will get all t business, will it not?

Mr. CUMMINS. No; if there were two railroads between t points——

The CHAIRMAN. Or ten railroads.

Mr. CUMMINS. And if one railroad would do the business for h of what the others were willing to do it for, it undoubtedly wou be taxed to its fullest capacity.

The CHAIRMAN. If the Commission should reduce the rate on c road would it not necessarily affect the rates of other roads?

Mr. CUMMINS. If the rate on corn or wheat from Iowa to N York were a certain sum per 100 pounds, and the rate from Iowa New Orleans were a certain sum per 100 pounds, then a reducti of the New York rate would not necessarily affect the New Orlea rate unless the railways desired to preserve the relation which n exists between those two points.

The CHAIRMAN. Would not the railroad have to go out of busin if, in competition with the others, it could not meet the rate betwe two points?

Mr. CUMMINS. Not in the general way you put it. The railro which does business for the least money between two points will g the business.

The CHAIRMAN. That is what I said.

Mr. CUMMINS. But you include many other things also.

The CHAIRMAN. But I say the reduction of that one rate may affect 500 rates, and the Commission would have to so find.

Mr. CUMMINS. I have in mind the exact point that will illustrate what you are suggesting, and I think it was brought out thoroughly by Mr. Hiland the other day. I happened to be interested in the investigation. It was with respect to a differential in rates on lumber from Eau Claire points and Mississippi River points. We investigated it, had a hearing before the Interstate Commission, and the Commission held the differential unwarranted and abolished it, and the Chicago, Milwaukee and St. Paul Railway Company promptly, in compliance with the order of the Commission, changed its rate. The other railway companies, not recognizing the action of the Commission at all, changed their rates, but preserved the exact relations which had been existing before, and in that way destroyed all the relief which we hoped to get through the action of the Commission.

The CHAIRMAN. Did they not have to do it?

Mr. CUMMINS. No, sir; they did not, because the Commission held that they could do business fairly upon the basis laid down by it.

The CHAIRMAN. I ask, did not the other railroads, in order to do business, have to meet that rate?

Mr. CUMMINS. No, sir; the Commission held that they could do business fairly without that differential.

The CHAIRMAN. How could they?

Mr. CUMMINS. Simply because it equalized the business, and they had the same chance to get it as had the other company.

Senator CULLOM. The Commission abolished the differential to make the arrangement between the other companies equal.

The CHAIRMAN. Do you believe in maintaining the present differentials, that obtain by the consent of the public and the railroads, to the various ports of the United States?

Mr. CUMMINS. I am not wholly at rest on that proposition, Senator. I should be very sorry to see any revolution or fundamental change in the business of the United States. I might be willing to subordinate my own view of what good government requires in order to preserve the status quo. I, for one, as a general policy, do not think that either the Government or the railways ought to interfere and take away from New York the advantages that justly belong to it and confer them upon Philadelphia or Baltimore or New Orleans or Galveston. I think that each locality is entitled to its own chance unless the demand arising out of public necessity is very imperative.

The CHAIRMAN. Do you not think that giving the power to a commission to fix a rate and make a substitute rate carries with it the power to the commission to say one community shall do business as against another community?

Mr. CUMMINS. No.

The CHAIRMAN. Or that one locality on a given line shall do business, and another farther away shall not?

Mr. CUMMINS. I put it a little differently. I think that the Commission should have the power to say that one community which is naturally better situated to do a certain business can do it if it desires.

The CHAIRMAN. Take the milk case, in New York. You are familiar with that, are you?

Mr. CUMMINS. I know it in a general way.

The CHAIRMAN. The ruling of the Commission was that the near-by producers should have a better rate than the producer 200 miles away. This was an exercise of a power that might drive a lot of milk producers out of business or lessen their profits, and the people of New York did not get milk cheaper.

Senator DOLLIVER. The Commission decided that everybody on a line of railroad 200 miles long, I think, should have the same rate into New York.

The CHAIRMAN. No; the railroads decided that.

Senator DOLLIVER. The Commission made that order.

The CHAIRMAN. It was a block rate, or group rate, as I understand. I understand they had a group rate for 200 miles the same as for 25 miles from New York, and the Commission reversed that. I may be wrong, but that is my understanding. I bring that forward to illustrate that when you give this power to substitute a rate you leave in the hands of a commission the power to determine absolutely (subject, of course, I suppose, to review), to decide in a large measure who shall do business and who shall not.

Mr. CUMMINS. I would rather the Commission should decide it than the railroad. Somebody has to decide it.

The CHAIRMAN. The railways certainly have an interest in developing all the business possible along their lines, while the Commission has none.

Mr. CUMMINS. The persons who furnish milk to New York have an interest in seeing the rates properly adjusted.

The CHAIRMAN. And the railroads make a very low rate so as to enable the far-off shipper to put his milk profitably into the market.

Mr. CUMMINS. If you should name a particular instance suggesting what the railroads did and what the Commission did, I might agree with the railroads rather than the Commission. I am discussing the matter upon general principles.

The CHAIRMAN. I brought up the milk case to illustrate that.

Mr. CUMMINS. I do not believe it would have the effect, however, that you suggest. Charging a higher rate for 200 miles than for 10 or 12 miles might have the effect of increasing the price of milk.

The CHAIRMAN. But if they charge the same rate up to 200 miles?

Mr. CUMMINS. It would not have the effect of reducing the price to the seller farther away.

The CHAIRMAN. You made the point that the rates were high 50 miles away from Dubuque, and thought that was unjust. If Dubuque wanted to ship any manufactured article 500 or 1,000 miles, would it not get the same benefit that other shippers get from other points in Iowa by a low rate to a long-distance competitive point?

Mr. CUMMINS. No. They might get the same rate as any other town in the immediate vicinity of Dubuque. But if it were to make a shipment to Dakota, and there come in competition with a Chicago producer, manufacturer, or wholesale man, Dubuque would have to pay a much higher rate proportionately than Chicago would have to pay.

The CHAIRMAN. Would you, on a given line in Iowa, oblige the railroads to charge the same rate to a noncompetitive local point that they do to through competitive points?

Mr. CUMMINS. It is very difficult to apply your hypothesis to Iowa and express any opinion upon it, because we have there a distance tariff. So far as Iowa is concerned I believe a distance tariff is the best possible solution.

The CHAIRMAN. But I am speaking of interstate traffic, not traffic within the State.

Mr. CUMMINS. Will you state your question again? I did not catch it.

The CHAIRMAN. The long and short haul section (sec. 4 of the Cullom Act), as interpreted by the Supreme Court, permits a lower rate to through competitive points than to intermediate points. Is it your contention that the near-by intermediate points should have the same advantages in the matter of rates as the through competitive points?

Mr. CUMMINS. Upon your hypothesis, no. Assuming that it is wise to build up a country by arbitrary rules, then there is no reason why the intermediate points should not pay more than the terminal competitive points. It may be best for the country that it should be done. But I would have to know the particular instance in order to express an opinion upon it.

The CHAIRMAN. Do you favor the long and short haul clause, to which I have just referred, as interpreted by the Supreme Court of the United States?

Mr. CUMMINS. Yes.

The CHAIRMAN. That seems to me to answer that question.

Senator CULLOM. Governor, that inquiry involves the decision on the part of the Supreme Court that the railroads can haul any distance and charge more for a short distance than for a long, however great the difference of distance may be.

Mr. CUMMINS. I am familiar with that decision, and my answer is upon this assumption: We are proceeding here upon the theory that the transportation business of the United States requires us to ignore distance and to discard cost of service very largely. If that be the basis for rate making, then there is no more reason why the long and short haul clause, as originally understood, should be adhered to than there is for giving Chicago a preference to a 200-mile point over Dubuque, which reaches the same point by a route of 50 miles. There seems to be an arbitrary arrangement or adjustment of rates to meet the demands of localities, emergencies, or a certain line of development. I am not fighting against that arbitrary system, but I am fighting against allowing the railroads to articulate the skeleton.

Senator CULLOM. Then you would be in favor of a mileage law for Iowa without reference to distance, and an interstate-commerce law without any long and short haul provision?

Mr. CUMMINS. If you were to ask my opinion upon that as an original proposition, and assuming that we were to go back to the beginning. I should say "No." I believe it would be better for this country if the railroad rates had been adjusted upon the basis of cost of service, taking in all the things which that term implies. But we seem to have passed that point, and it is hard to return to it.

The CHAIRMAN. Do not your Iowa farmers and producers get their surplus grain and live stock to the market largely under this low rate under the long haul?

Mr. CUMMINS. No; they do not; not in the sense in which that is

used. I suppose you mean to imply an excessive or unreasonably low cost?

The CHAIRMAN. I mean just as the business is conducted to-day.

Mr. CUMMINS. No, sir; I think our people go into the eastern markets with butter and eggs upon a rate to which they are not entitled in any fair adjustment.

The CHAIRMAN. Your people are not entitled to it?

Mr. CUMMINS. They are not entitled to it upon any fair adjustment of rates throughout the United States; but that does not add one penny to the price for which our people sell their butter or eggs. They do not get the benefit of that low adjustment of rates. I will tell you why. The people of New York, Boston, and the cities of the East and the territory about these cities can not and do not produce enough butter and eggs to supply the people of the East. The only effect of these low rates upon such commodities is to lower the price to the consumer, and not to increase the profit to the seller in Iowa. Suppose the rate were differently adjusted and that New Hampshire or Vermont could reach Boston at a very much lower rate than we reach Boston with butter and eggs; she can not supply the demand, however, and our butter and eggs must still go to Boston.

The CHAIRMAN. Could you get these articles to market without a low rate?

Mr. CUMMINS. Certainly; people must have butter and eggs.

The CHAIRMAN. If the price of butter were $1 per pound, by reason of a high rate, I do not think the producers would sell much.

Mr. CUMMINS. They do not make any such price. The increase is inappreciable.

The CHAIRMAN. But when you come to the heavier products you could not get them out of Iowa except at a low rate. How would you move the surplus products of Iowa if you did not have low rates? The freight rates would be so high, added to the cost of the product, that the consumer would not take it.

Mr. CUMMINS. I will answer that question: We do move our cattle and hogs and other live stock. That is our principal export.

The CHAIRMAN. And grain?

Mr. CUMMINS. I said cattle and hogs were our principal exports. Normally, in comparison, we move very little grain. What do we do? We move the great bulk of these commodities to Chicago, there to be manufactured. I am speaking now from memory, without having consulted figures recently, but we pay 23 cents, possibly 23½ cents, on cattle and hogs from the Missouri River to Chicago, and we run down until we reach 15 cents as we approach the Mississippi River. Do you call that an abnormally low rate? I call it very reasonable, and if it shades off in either direction it shades off toward an excessive rate.

The committee took its usual recess.

AFTER RECESS.

CONTINUATION OF STATEMENT OF MR. ALBERT B. CUMMINS.

The CHAIRMAN. Governor, I think we left off on the subject of rates to intermediate points being made as low or as high as to through competitive points. Would you favor that, either way? I think you have answered it, but I will ask you again.

Mr. CUMMINS. As an original proposition I favor the long and short haul clause of the interstate-commerce law of 1887, as I understood it. What I said immediately before adjourning was that if we are to abandon all these landmarks for fixing rates and make rates simply to develop the country according to somebody's view of its welfare, then I could see no reason in the prohibition in the act of 1887 as to the long and short haul.

The CHAIRMAN. In view of conferring upon the Commission this very enormous, far-reaching power—that is, the power that is asked for, to make rates—would you favor the long and short haul section of the act as interpreted by the Supreme Court?

Senator FORAKER. He answered that question.

Mr. CUMMINS. You mean if I could have my own way about it?

The CHAIRMAN. On behalf of the public. You are speaking for the public now and giving us your own views as to what is best for the country and what is best for us all.

Mr. CUMMINS. I believe that the public good would be subserved if both the railways, with the power they now exercise, and the Commission, with the power that is sought to be given to it, were absolutely prohibited from charging more for a short haul than a long haul over the same line.

The CHAIRMAN. Governor, unless the railroads were to make this low rate to competitive points for the long haul, do you think it would be possible for the Western States to get their products to market?

Mr. CUMMINS. I do.

The CHAIRMAN. You think they could?

Mr. CUMMINS. I do.

The CHAIRMAN. Now, please explain to the committee how that could be done.

Mr. CUMMINS. You will have to give me an instance. I suppose you are speaking now of grain, live stock, and other things of that kind?

The CHAIRMAN. Yes; meat products, and so on.

Mr. CUMMINS. We will take a road from the central part of New York as the means of transportation, and cattle as the commodity. I can not imagine any circumstances that would warrant any railway company in charging more for transporting those cattle to Chicago than for transporting them to New York; and I do not believe there is a railway in existence, even though it be the longer railway, that would suffer upon any such commodity as that in being prohibited from charging not more, at least, for the short haul than the long haul; and I can not see how it would interfere in any way with marketing the western products.

The CHAIRMAN. It seems to me that those low rates enable a farmer to reach the market and sell his products in the market.

Mr. CUMMINS. Yes.

The CHAIRMAN. If he did not have the low rate, and was charged the high rate that you contend for, it seems to me that that would add to the cost of the commodity or product to such an extent that he could not sell it.

Mr. CUMMINS. I am not contending for a high rate anywhere.

The CHAIRMAN. Then you would contend for lowering the rates to these noncompetitive intermediate points?

Mr. CUMMINS. Yes; I believe that as a general rule the rate to the intermediate point should not be higher than the rate to the terminal point.

The CHAIRMAN. But how could a railroad live and make any return to its stockholders if it had to lower the rate to the intermediate points in proportion to the low through rate? It seems to me that if it had to do all of its business on that basis, or if it had to go out of the long-distance haul, it would not make anything.

Mr. CUMMINS. What harm would it be to any railway company to refuse, if you please, to transport cattle to the intermediate points between Iowa and Chicago, if it wanted to put in a low rate for cattle?

The CHAIRMAN. Or make longer distances, if you please?

Mr. CUMMINS. It has no business to the intermediate points for cattle.

The CHAIRMAN. Well, say cattle, and then make all other rates the same. If that was done, the railroads could not make any money.

Mr. CUMMINS. Do you assume that their long haul is done at a loss?

The CHAIRMAN. I will say this: As I understand, business conditions oftentimes compel railroads to haul the surplus products to market at a loss.

Mr. CUMMINS. That is true, I think, as business conditions have been developed by the rates that have been in force heretofore. I do not believe those business conditions would exist if the rates were properly adjusted.

The CHAIRMAN. Can you possibly control business conditions by any act of Congress?

Mr. CUMMINS. Not altogether.

The CHAIRMAN. Or at all?

Mr. CUMMINS. Oh, yes.

The CHAIRMAN. How far can you, by legislation, make favorable business conditions?

Mr. CUMMINS. I think, you know, that the tariff law of the United States has given us more prosperity and increased our business more than any other one cause. There we have interfered with natural conditions, and there we have made business.

The CHAIRMAN. I do not think that is a parallel case at all, because, incidentally, in that way we get enough money to run the Government, or help run it.

Mr. CUMMINS. Yes; incidentally.

The CHAIRMAN. That is a necessity.

Mr. CUMMINS. I am very glad we do; but we are not getting enough just now.

The CHAIRMAN. Of course the railroads do not contribute to that. Now, Governor Cummins, the railroads often haul your wheat and grain for 2 mills a ton a mile; and I do not know the rates on meat products, but they are very low. Business conditions oblige them to do it. Now, a railroad prospers in accordance with the volume of its business. If you can increase the volume of freight—that is, the long-haul freight, some of which is carried at cost and some above cost—together with the volume of freight to intermediate points, for which higher rates are charged, the railway lives and prospers; and it could not prosper otherwise. Now, it does not hurt

these intermediate points because the local rate is not as low as the through rate.

Mr. CUMMINS. It might not hurt them, and it might; it depends.

The CHAIRMAN. It does not, as a fact.

Mr. CUMMINS. It depends on the circumstances.

The CHAIRMAN. Would they be any better off if you did not allow the low rates for the long haul?

Mr. CUMMINS. They might not be any better off, except by getting their freight at a cheaper rate.

The CHAIRMAN. How could they? The rates that the railroads make to the intermediate points are the same; they maintain them; there is no combination.

Mr. CUMMINS. At the present time some of the long-haul rates are very much lower than the rates to the intermediate points.

The CHAIRMAN. As to cattle?

Mr. CUMMINS. So startlingly lower that I do not believe they are justified by the situation.

The CHAIRMAN. The men who do the business and the managers and the owners of the railroads think that, with the others things they do, they can go ahead and make a living by doing them.

Mr. CUMMINS. Well, I yield my judgment in a particular instance to the railway manager as to what is for the best interest of the railway. I would rather yield it to a commission to determine what is for the best interest of the people.

The CHAIRMAN. Do you not think, on the whole, then, that we had better leave the question of managing the railroads largely to the owners of the railroads, except in cases of oppression, extortion, and excessive rates?

Mr. CUMMINS. And unjust discrimination.

The CHAIRMAN. Well, we have provided for that.

Mr. CUMMINS. Yes. I believe that all the discretion and liberty that is possible should be left with the managers of the property. I only say that our experience has, it seems to me, developed the necessity for giving this particular power to the Commission, and I am of the opinion that it would not be wise to longer leave that power untrammeled and unrestricted with the railways.

The CHAIRMAN. The law as it now exists, and as we can strengthen it, I think, protects the public against an excessive rate—an extortionate rate.

Mr. CUMMINS. I think that the law as it now exists, if it were energetically enforced, would do something toward the relief that we think we are entitled to. I do not think that it is as efficient in cases of discrimination as the power given to the Commission to fix a rate. I agree that if the Commission applies to a court and secures an injunction to restrain the maintenance of a particular rate, that is Government interference with rate making, and it does afford some relief, because I assume that the railway company will yield in good faith to that proceeding; but it is not the direct and efficient method as I view the subject.

The CHAIRMAN. Now, Governor, as a practical matter, do you not think that business conditions compel or control the making of rates, rather than the owners or traffic managers of the railroads?

Mr. CUMMINS. I believe that business conditions impel railway

managers to make changes from time to time. As to whether those changes are wise or not, I would have to examine each particular instance in order to have an opinion.

The CHAIRMAN. At least, the owners of the railroads think they are wise.

Mr. CUMMINS. Undoubtedly.

The CHAIRMAN. For instance, a railroad sometimes, from the mere necessity of things, without wishing to do it, makes a rate below cost?

Mr. CUMMINS. Yes, sir.

The CHAIRMAN. It does not want to do that?

Mr. CUMMINS. I agree to that.

The CHAIRMAN. But it is often obliged by business conditions, the necessities of trade emergencies, and what not, in order to get the surplus to market and to protect its localities and patrons in getting their products to market, to haul them at a loss or at cost or a little above?

Mr. CUMMINS. I agree substantially to what you have just stated; but I see nothing in the proposed authority to the Interstate Commerce Commission to change the liberty of railway companies in making rates of the kinds you have just suggested.

The CHAIRMAN. Right there, Governor, do you think the Commission would lower a rate to the point that the railroads lower it?

Mr. CUMMINS. The railways can lower it.

The CHAIRMAN. I know; but they are the judges; they are the owners. But do you think a Government commission, cold and impartial as it must be in the interests of equality and justice, would dare to say to a railroad, "You shall haul below cost?"

Mr. CUMMINS. No; I think not. I think the Commission, assuming that that particular subject had been in the hands of the Commission, would make a rate. We will assume that the railway company has accepted it. Circumstances arise which make it necessary, from the railway point of view, to lower that rate, even to a point below cost. There is nothing in any order which the Commission has made respecting the rate which will interfere with the lowering of the rate.

The CHAIRMAN. Then it is the mere revisory power which you propose to confer upon them?

Mr. CUMMINS. No; the Commission make a maximum rate. The railways can go just as much below it as they see fit; and their only limitation is the danger of running up against a provision of the law which, under your leadership, was put into it, very wisely, in 1903.

The CHAIRMAN. Then how would you prevent discrimination, unless this Commission had the power to name a minimum rate as well between localities?

Mr. CUMMINS. There would remain exactly the same question to be finally submitted, of course, to the court.

The CHAIRMAN. Now, understand, railroads can by consent of the public do things that a commission could not do. When a commission comes to exercise this power, it must adopt some uniform, just basis of fixing rates, from which it can not depart to meet the demands and exigencies of business.

Mr. CUMMINS. That is not my idea of what a commission should be; but it may be the one that would be finally created.

The CHAIRMAN. I do not see how it could do otherwise. You said, Governor, and properly so, that the rapid changes in business nowadays demand the making of new rates. Now, they do make such rates. There are rates called "midnight rates." I will illustrate what I mean by saying that a railroad is offered a thousand cars of freight to the Pacific coast or the Atlantic coast. It finds that inside of three hours it has to decide whether it can get return freight for the cars that go to the coast for that purpose—that is, "return empties," as we call them—freight for the returned cars. If it can, it can make at that moment a lower rate to take your wheat and corn and meat products to the Atlantic ports or the Gulf ports than if it did not get the empties loaded for return. Should not that power to act immediately reside somewhere, and preferably in the hands of the owners and managers of the property? Could you go to a commission and say, "I want to change this rate right now?"

Mr. CUMMINS. I think it would be in the hands of the railway companies.

The CHAIRMAN. But not if the Commission has fixed the rate already.

Mr. CUMMINS. You are thinking about a specific minimum rate?

The CHAIRMAN. Yes, sir; if they fixed the rate, you could not do it. There is a case where a thousand cars would lose that business.

Mr. CUMMINS. I think the railway company, under any system that I have in view, would have the right and the power to do that—assuming, always, that it did not violate any order of the Commission which would discriminate against other localities.

The CHAIRMAN. Yes; but it would be violating it if the Commission had fixed a certain rate.

Mr. CUMMINS. That is not proposed, I think.

The CHAIRMAN. That is the particular rate that the Esch-Townsend bill provides for, though.

Mr. CUMMINS. I would not be in favor of a minimum rate—not unless it were necessary to prevent discriminations.

The CHAIRMAN. Are you familiar with the Esch-Townsend bill?

Mr. CUMMINS. Fairly so.

The CHAIRMAN. Do you favor it?

Mr. CUMMINS. If I could not get any better one to vote for, if I were a member of Congress, I would vote for it; but there are a great many respects in which I would like to see it changed.

The CHAIRMAN. How many respects, and in what way? How many amendments would you make to it?

Mr. CUMMINS. Well, if I had it in my power I would abandon it and draw another.

The CHAIRMAN. That is sufficient, of course.

Mr. CUMMINS. I must pursue that one step further, however. I would simply amend the present interstate-commerce law by granting to the Commission the power to fix a rate in the stead of one that was found to be unlawful, and I would say that that rate, so fixed, should be prima facie evidence of a reasonable rate; and I would drop the subject right there.

The CHAIRMAN. That is the extent to which you would amend the law?

Mr. CUMMINS. That is my own view of it. I would not have any additional courts. I do not believe the judicial force of the United

States needs to be enlarged. I would have no special court of transportation or of commerce, for I think that the existing judicial procedure is sufficient to enable any court to reach an unlawful act of the Commission. Of course, now, that is an abstract notion. As I say, I would rather have the Esch-Townsend bill than to leave the situation as it now is.

The CHAIRMAN. But the rate you refer to, being a legislative rate, provided for by law, could not be changed; could it?

Mr. CUMMINS. Oh, yes, sir.

The CHAIRMAN. How would you amend the law so as to get at that?

Mr. CUMMINS. To change it?

The CHAIRMAN. You could not change that rate, once it was a legislative rate.

Mr. CUMMINS. Why, the Commission could change it.

The CHAIRMAN. What process would you suggest? That it be done on petition of the railroads?

Mr. CUMMINS. Anybody's petition.

The CHAIRMAN. The railroads, of course, are most interested.

Mr. CUMMINS. Yes.

The CHAIRMAN. But by the time they would petition the Commission and get a hearing, I say, the opportunity to do the business would have passed.

Mr. CUMMINS. The opportunity to do the business always comes with a reduction of the rate, which the railway is always at liberty to make.

The CHAIRMAN. Not a legislative rate, fixed under the power of the legislature?

Mr. CUMMINS. The rate that I have suggested as being fixed by the Commission would be no more a legislative rate than the one which is now proposed in the Esch-Townsend bill. Its quality would be exactly the same.

The CHAIRMAN. You spoke of Iowa getting relief. Do you not think that if Iowa is injured by the railroads—any injustices or preferences or high rates—the people of that State can get relief under existing law?

Mr. CUMMINS. I think they feel that the existing law does not afford them a remedy for the particular evil which they imagine exists.

The CHAIRMAN. "They imagine?"

Mr. CUMMINS. Yes, sir; they may not be right. I do not pretend to pass finally upon these controverted questions; I am simply asking for a tribunal that will.

The CHAIRMAN. Would you apply the law governing rates in Iowa, and the principle of that law, to interstate traffic?

Mr. CUMMINS. I would apply the Iowa law to interstate traffic, but I would not apply the Iowa distance tariff to interstate traffic. The law does not require the Iowa commissioners to make a distance tariff. It simply authorizes them to make and publish for each railway a schedule of tariffs. The only respect in which I think the interstate-commerce law should not be modeled upon the Iowa law is that our commission initiates rates—makes a general schedule of rates. I do not think that would be wise in the case of the Interstate Commerce Commission.

The CHAIRMAN. If it is the correct principle, why not?

Mr. CUMMINS. Simply because it is a policy of the Government to allow the individual or the interest all the liberty that it can allow it without public injury; and our experience has shown that up to this time it is only necessary to give the commission the power to fix a rate in the case of a complaint and a hearing.

The CHAIRMAN. How long has the present law of Iowa on the subject of rates been in force?

Mr. CUMMINS. The Iowa railroad commission was given the authority to make a public schedule of rates for each railway in 1888.

The CHAIRMAN. Have the rates been changed since they made that law?

Mr. CUMMINS. Have there been any changes?

The CHAIRMAN. Yes.

Mr. CUMMINS. I think there have been a few.

The CHAIRMAN. Many?

Mr. CUMMINS. Not many; very few. When I say "changes," I include, of course, classification as well as the distance rate.

The CHAIRMAN. On what particular basis would you make rates for interstate commerce, or have the Commission make them? What would be the principle governing the fixing of rates that would be just and remove the objections you have to the present methods adopted by the railroads?

Mr. CUMMINS. I will, if possible, repeat the answer I have already made. I believe that the true, just principle for the fixing of rates is the cost of the service. I believe that there are some circumstances so imperious that they may demand a departure from that rule, and under those conditions the public good, while rather vague, would be the only criterion.

The CHAIRMAN. Would not that destroy the long haul?

Mr. CUMMINS. It might.

The CHAIRMAN. And would not that be disastrous to your farmers and producers?

Mr. CUMMINS. It might. There are circumstances that I can imagine that ought to destroy the operation of the long and short haul idea.

The CHAIRMAN. You speak of maximum rates being fixed by the Commission. Would that mean a rate which would pay the cost of service with a reasonable profit in all cases; and then, if the railroad wanted to carry it for less than cost, it could do so without any further action by the Commission?

Mr. CUMMINS. I think that in fixing any particular rate the Commission would probably have very little concern with its effect upon the aggregate revenue. You are putting before me a case in which the Commission takes the whole subject and makes rates for the whole country for all the railroads. That is not to be the situation, as I understand it.

The CHAIRMAN. You said your feeders were discriminated against now. Is it such a case of discrimination as comes under the present law and could be stopped by injunction; and, if so, why do they not apply for it at once?

Mr. CUMMINS. I think it is a case of discrimination which is denounced by the present law.

The CHAIRMAN. Then it is reached by the present law?

Mr. CUMMINS. I think that if any feeder had sufficient persistence he could probably get the Commission to obtain an injunction against the continuance of that particular and identical practice; but there would be nothing substituted for it excepting the rates that the railway companies might see fit to substitute for it; and all those things together, I think, rather discourage a man and influence him against instituting any action.

The CHAIRMAN. Just as soon as the injunction was granted the discrimination would have to cease, would it not?

Mr. CUMMINS. That particular discrimination would have to cease, but another discrimination might be substituted in its stead.

The CHAIRMAN. Then you could take that up, could you not, and reach it by injunction?

Mr. CUMMINS. I know; but they are so busy feeding their cattle that they do not like to go into lawsuits.

The CHAIRMAN. The Commission can do that, and at its expense, and not at the expense of the shipper?

Mr. CUMMINS. I think so.

The CHAIRMAN. Now, Governor, in the packing-house case in Iowa, brought by the Chicago Board of Trade, you took a position, I believe, similar to the one you take here?

Mr. CUMMINS. I should be very happy if the two are found to be consistent. I have not measured the one by the other.

The CHAIRMAN. You said the cost of service should govern the rate, did you not?

Mr. CUMMINS. Yes, sir; I believe that.

The CHAIRMAN. In that case, as I understand it, the railroads were charged with violating the interstate-commerce law by giving the packing houses in Iowa a lower rate on packing-house products than were given the Chicago packers on live hogs. Was that the case? Was that the contention?

Mr. CUMMINS. I can not recall the way in which the issue was framed, but my recollection is that it was an attempt on the part of the Chicago Board of Trade to get a lower rate on hogs than the rate on the packing-house product, and upon our part—that is. upon the part of the Iowa packers—to get a lower rate on the packing-house product than the live hogs. At least, those were the questions which were argued before and submitted to the Commission.

The CHAIRMAN. You took the position that the cost of transportation was not the sole criterion, but that the benefits to the article transported must be considered as well?

Mr. CUMMINS. I took the position that the cost of service was the general criterion for rates, but that it might be influenced by the public good—the public good in that particular instance being the great shrinkage which occurs in a long shipment of fat hogs as compared with a short shipment of fat hogs.

The CHAIRMAN. Did you not claim in that case that unless the packing houses did receive a better rate on products than Chicago received on live hogs the packing houses of Iowa would have to go out of business?

Mr. CUMMINS. I might, in the enthusiasm of an advocate, have put it just that way. What I said and meant, however, was that if *the packing* houses of Iowa did not receive a lower rate on the pack-

ing-house products than Chicago had upon the live hog the Iowa packing houses could not prosper.

Senator NEWLANDS. Mr. Chairman, I would like the Governor to state, right here, what he includes in the term "cost of service."

The CHAIRMAN. I was coming to that; but you can state it right here, if you will, Governor.

Mr. CUMMINS. It would be almost impossible for me to enumerate all the items that enter into cost of service. They include the character of the equipment necessary to do the work, the speed of the trains in hauling the product, the return business created by the particular traffic, and the risk involved in doing the work.

Senator NEWLANDS. Do you include in that term any return upon the capital invested?

Mr. CUMMINS. Oh, no. I do not regard the capital invested as a factor entering into the cost of the service.

Senator NEWLANDS. You mean by that term, then, the cost of operation?

Mr. CUMMINS. Not entirely.

The CHAIRMAN. The whole cost?

Mr. CUMMINS. Not entirely the cost of operation.

Senator NEWLANDS. Would you include in that term fixed charges, such as taxes, interest on debt, etc.?

Mr. CUMMINS. No; because there is no discrimination as between different kinds of traffic in the taxes paid by a railway company. When I am speaking of the cost of service, I am, of course, attempting to define a rule that will divide what the company should receive as a whole amongst the various kinds of traffic that it carries on. The amount which the railway should receive as a whole is not determined by any such consideration.

Senator NEWLANDS. But the amount which the railroad company should receive as a whole would include the amount necessary to cover taxes, fixed charges, and a return upon the stock, would it not?

Mr. CUMMINS. Unquestionably—that is, I do not agree that it should always include a return on the stock.

The CHAIRMAN. Now, Governor, coming back to that case in which you appeared, do you remember what the Interstate Commerce Commission found as a fact?

Mr. CUMMINS. Yes, sir; I remember what the Interstate Commerce Commission decided.

The CHAIRMAN. I mean, found as a fact and decided. What?

Mr. CUMMINS. It decided that the rate should be the same.

The CHAIRMAN. On what?

Mr. CUMMINS. On live hogs and packing-house products—on the crude products.

The CHAIRMAN. And any departure from this was a violation of the interstate-commerce law?

Mr. CUMMINS. It would be a violation; yes, sir. I did not agree with the Interstate Commerce Commission, mark you.

The CHAIRMAN. Has your prediction that the packing houses of Iowa would be forced out of business if the roads were compelled to transport live hogs and packing-house products at rates proportionate to the actual cost of transporting each been verified?

Mr. CUMMINS. I never made the prediction, I think, in just that way. It has been substantially verified.

The CHAIRMAN. How many packing houses are there still in existence in Iowa?

Mr. CUMMINS. I am not sure. We have a packing house at Sioux City. I do not regard that as an Iowa packing house, although it is in our State, because it is supplied in the main with material from the West, and takes a rate peculiar to itself.

The CHAIRMAN. I should have said other than at Missouri River points.

Mr. CUMMINS. We have a packing house in Des Moines, or have had for a few years now. The decision to which I referred absolutely drove away two of the packing houses that we then had. We have a small packing house at Marshalltown, which, if I understand the situation aright, exists only because it has a market for its own product established abroad. We have a packing house at Cedar Rapids, which does a very considerable business, and one at Ottumwa.

The CHAIRMAN. Those that are still in existence are impaired or hampered, are they not, to some extent, by the adoption of the principle which you contended against so vigorously in that case?

Mr. CUMMINS. I think they are.

The CHAIRMAN. Has the Interstate Commerce Commission ever adopted any other criterion than that of cost of transportation, which you seem to favor now?

Mr. CUMMINS. I do not want to be technical, nor do I want to be misunderstood. I have never used the phrase "cost of transportation," but "cost of service."

The CHAIRMAN. I believe you did use that expression, "cost of service;" yes.

Mr. CUMMINS. Which I think very different. I do not know whether the Interstate Commerce Commission has ever adopted that rule or not, or whether, having adopted it, it has ever departed from it.

The CHAIRMAN. Do you know the town of Glencoe, in your State?

Mr. CUMMINS. I know where it is.

The CHAIRMAN. Do you think the Interstate Commerce Commission, following the principle laid down in the case in which you appeared as counsel for the packing houses, would approve a rate to Chicago from Glencoe, Iowa, as follows: A carload of hay, $33.25; cattle, $51.70; hogs, $28.75; wheat, $87.50; corn, $80?

Mr. CUMMINS. I should hope not.

The CHAIRMAN. What would be the effect, then, on the hay business in Glencoe if the Commission were to apply the rule referred to and compel the railways to haul the several agricultural products in proportion to the actual cost of transportation?

Mr. CUMMINS. Well, you see, you unite two very different things.

The CHAIRMAN. Just answer them the best you can.

Mr. CUMMINS. I can answer each of them, but I can not answer them together. I should think that a commission that so declared had either lost its patriotism or its sense; and I think the result of any such rates upon the particular town that you have named would be quite disastrous.

The CHAIRMAN. Could hay, then, stand practically the same rate per car that corn and wheat could bear?

Mr. CUMMINS. You are now entering into the details of transporta-

tion with which I am not familiar and do not pretend to be familiar. I believe that some consideration should be given to the value of the material or commodity transported.

The CHAIRMAN. The cost of service in each case is about the same, is it not?

Mr. CUMMINS. No, sir.

The CHAIRMAN. What is the difference?

Mr. CUMMINS. There is a great deal more risk in transporting a valuable article than one that is not valuable, taking it in the long run.

The CHAIRMAN. In the case of hay and grain one is more valuable than the other, it is true; but the risk and cost are not so very different, are they?

Mr. CUMMINS. In those particular instances I would not be prepared to express an opinion as to what the relative rate should be, for I have not investigated them; and possibly I would not be able to express a confident opinion if I had.

The CHAIRMAN. Has the Interstate Commerce Commission ever adopted any other rule than the rate per mile as between different hauls on the same product?

Mr. CUMMINS. I do not know.

The CHAIRMAN. Has the Interstate Commerce Commission ever adopted any other rule than the relative cost of transportation as between different products?

Mr. CUMMINS. That I do not know. I may say that I am not as familiar with what the Interstate Commerce Commission has done as a great many other people.

The CHAIRMAN. There is one other question here. Suppose a road going through your State passes a deposit of coal, let us assume of inferior quality, and an undeveloped deposit of rock, and a tract of timber, and a tract of wet land which produces nothing but hay, as well as other lands which produce all the cereals. Do you think this company should fix its rates on coal and rock and lumber and hay and grain and cattle and hogs just in proportion to the relative cost of transporting each, or should it so adjust its tariffs as to develop each and every possible industry along its road?

Mr. CUMMINS. The dominant principle should be the relative cost of service, to be varied only in an emergency.

The CHAIRMAN. Do you know what the rate was on a cargo of wheat between Missouri River points and Chicago or New York or Liverpool twenty-five or thirty years ago, and what it is now?

Mr. CUMMINS. No.

The CHAIRMAN. Are you familiar with this private car system, with what are commonly called the "refrigerator cars?"

Mr. CUMMINS. Yes, sir; I know it as one may know of it by reading what is said about it, and I have some observation that is personal in its character.

The CHAIRMAN. Do you think that out of this system grow abuses and evils that affect the public interest generally?

Mr. CUMMINS. I do not know; I have not sufficiently investigated the subject to know whether the charge made against the system is true or not. If it be true that the railway companies use the private cars as a guise for giving to the owners of the cars a more favorable

rate than is enjoyed by others, then it is a great evil. If, on the contrary, the railway companies only pay to the owners of these cars a fair and reasonable compensation for the use of the cars, I see, then, no objection whatever to the practice.

The CHAIRMAN. Would you subject these owners of private cars or refrigerator cars to the interstate-commerce law governing common carriers?

Mr. CUMMINS. I have not a settled opinion upon the matter. I see no very great necessity for it, assuming that under the law as it now exists the railways can be compelled to limit their payments to private car companies to bona fide and fair compensation.

The CHAIRMAN. Would you abolish the private car system, on the whole, as you have seen it and noticed its operation?

Mr. CUMMINS. I would not, by the law. While I think it would be a better condition if the railway companies owned all the facilities for commerce and operated them themselves, yet I am not prepared to say that the mere existence of private car lines is so menacing to the public good as to require abolition.

The CHAIRMAN. On what particular commodity or commodities are the rates from Iowa excessive?

Mr. CUMMINS. I do not know that they are excessive upon any, except in comparison with rates from other points which our business men and manufacturers must reach in order to do business.

The CHAIRMAN. To what extent would you reduce the rate from your State to the seaboard on agricultural products, if you could?

Mr. CUMMINS. As a citizen of Iowa, I would be inclined to do anything that might help our people. If I had the responsibility of the whole people in determining the matter, I do not know whether I would or not. It would depend upon the facts that might be developed before me.

The CHAIRMAN. You know, Governor, that the rates from Iowa to the seacoast on agricultural products are considerably less per mile than the rates from Pennsylvania and Ohio, do you not?

Mr. CUMMINS. I do not know.

The CHAIRMAN. Well, that is a fact; they are. I was going to ask you, then, whether Iowa could stand a mileage rate as compared to these other States?

Mr. CUMMINS. You mean, of course, a distance tariff graduated in the ordinary way, because it might be so graduated as to make no great difference with the existing rates. I think that a distance tariff, graduated in the way that we ordinarily see it graduated, would be very disastrous to the State of Iowa.

The CHAIRMAN. What, in your opinion, would be the effect on the merchants of Des Moines and Sioux City if they were compelled to pay the same rate per mile that the merchants pay in Indianapolis, Logansport, Columbus, Ohio, and other similar points east of the Mississippi River, for instance?

Mr. CUMMINS. I think it would be very injurious to our merchants; but I do not believe that anybody ever proposed that they should pay the same rates per mile. Even distance tariffs are not made up upon that basis.

The CHAIRMAN. Are they not getting some advantage, then, by reason of the long-haul rate?

Mr. CUMMINS. Not a bit—no advantage to which they are not entitled——

The CHAIRMAN. Oh, no; I say that, too. The railroads say the same thing; but they are getting advantages over such States as Ohio?

Mr. CUMMINS (continuing). That they are not entitled to upon the principle that I have attempted to express here.

The CHAIRMAN. What would be the effect on the fruit interests of California if the fruit growers of that State were compelled to pay the same rate per mile as is paid by the Delaware and Georgia fruit growers?

Mr. CUMMINS. That would depend upon the liking which the people had for California fruit.

The CHAIRMAN. It might be so high that they could not buy it?

Mr. CUMMINS. It might make a very great difference in the cost of California fruit.

Senator CULLOM. In justice to the Governor, as well as to the balance of the gentlemen here, I think we ought to be brief in disposing of any one witness; but I will ask the Governor a very few questions. You are here, I suppose, representing the State generally, as governor of the State?

Mr. CUMMINS. I will explain. I feel that it is my duty, as governor of the State, to do what I believe to be for its best interests; but I was requested by the Secretary of the Iowa Manufacturers' Association to appear before the committee. I said that I could not and would not attempt to appear without an invitation. Thereupon, I take it the secretary of the association conferred with this committee or with its chairman, and as the result of that I received an invitation to be present.

Senator DOLLIVER. And I will add, if the Governor will permit me, that long before that I had requested the chairman to invite the Governor to appear.

The CHAIRMAN. That is a fact; it was in my mind to invite you when I received this reminder or notice. I was going, Governor, to issue the invitation just about that time. Senator Dolliver recalled it to my mind.

Senator CULLOM. No apology on the part of the Governor would be necessary for his appearing here, even if neither of you had invited him.

You then directly appear here as the representative of a manufacturing establishment or establishments in your State?

Mr. CUMMINS. Yes; the Association of Iowa Manufacturers, comprising a great many establishments of that character.

Senator CULLOM. In different parts of the State or all in Des Moines?

Mr. CUMMINS. All over the State.

Senator CULLOM. Have you heard any complaints or any complaint?

Mr. CUMMINS. I have heard a great many.

Senator CULLOM. On the part of your people against the interstate-commerce law as it is and in favor of an amendment to it or a new act?

Mr. CUMMINS. I have heard no complaint, properly speaking, against the interstate-commerce law, but complaints that it was ineffective in a certain respect.

Senator CULLOM. What is that respect?

Mr. CUMMINS. In that it did not confer upon the Commission the authority to fix a rate instead of one that had been found to be unlawful.

Senator CULLOM. So that your real complaint and the complaint of your people is simply that they want a law authorizing some commission to have the power to make a rate?

Mr. CUMMINS. That is all.

Senator CULLOM. That is what you are contending for?

Mr. CUMMINS. I do not think they have examined the details of things. They simply go right straight to the vital point.

Senator CULLOM. Are you sure—reasonably sure, of course, nobody is sure of anything that is to happen hereafter—are you convinced that we ought to have a commission with the power to make rates?

Mr. CUMMINS. I am.

Senator CULLOM. Do you mean by that to make rates generally or to determine whether a given rate where complaint is made is or is not reasonable?

Mr. CUMMINS. I mean the latter; to fix a rate only where a complaint is made and where the Commission has found the complaint to be well founded. I believe that would result in the general fixing of very few rates.

Senator CULLOM. You think it would not result in its fixing many rates?

Mr. CUMMINS. That is my opinion.

Senator CULLOM. You remember what is called the Maximum Rate Case?

Mr. CUMMINS. I know something of it.

Senator CULLOM. Where the court decided that if a commission had the power to make rates at all it could make rates for the whole system of roads throughout the country in one day.

Mr. CUMMINS. I remember that expression of the Supreme Court very well.

Senator CULLOM. The court used something like that language.

Mr. CUMMINS. And that, I take it, forms the basis from a public standpoint, anyhow, of the opinion. But such a power would be unwise, and it would not at least be construed into the act of 1887.

Senator CULLOM. Do you want that power limited in any way?

Mr. CUMMINS. As I have tried to say, I believe the power ought to be limited to the action on the part of the Commission in the particular case that it has tried. If it tries a hundred cases, of course the power would be limited to the hundred cases.

Senator CULLOM. In other words, you want the law as it is now in some particulars; that is to say, that where a neighborhood, a community, complain of a rate being unreasonable, or too high, you want the Commission to go there, investigate that particular case, and determine whether that rate is too high or whether it is reasonable, and if it is too high in the judgment of the Commission, to declare that it is an unreasonable rate, and then to fix another. Is that what you want done?

Mr. CUMMINS. That is what I want done.

Senator CULLOM. That additional power is all that you want over and above what the law now requires.

Mr. CUMMINS. That is my view of the requirements of the hour.

Senator CULLOM. I took up this paper a moment ago, and I see here that it is remarked that a gentleman representing the President as well as Secretary Hay, in the absence of both from Washington, took occasion at a dinner of railway men the other night to warn them that railroad legislation must come, because the sentiment of the country demands it, but he limited his definite suggestion to the granting of the power to fix a maximum rate. Do you believe in that?

Mr. CUMMINS. No, sir; I would not limit the power of the Commission to a maximum rate, although I would not expect the power to be exercised oftentimes otherwise than through a maximum rate.

Senator CULLOM. Suppose that maximum rates were made for the whole country, do you think that would do any good?

Mr. CUMMINS. No.

Senator CULLOM. None at all?

Mr. CUMMINS. No, sir.

Senator CULLOM. Now, you say there is complaint among your manufacturers. In what have they complained?

Mr. CUMMINS. Well, I may have to enlarge a little upon that.

Senator CULLOM. About what?

Mr. CUMMINS. We have a number of manufacturers. I think it is the observation of most men that a manufactory must have a wider field than is afforded by any one State. So long as these manufacturers are confined to their own State there is no difficulty, they fare alike. The moment they pass beyond the lines of our State then they meet competitors in Chicago and St. Louis—I am only mentioning them to illustrate—upon terms which they believe to be unfair. In other words, the Chicago manufacturer reaches the point on better terms than the Iowa manufacturer or the St. Louis manufacturer or the New York manufacturer does the same thing, and that limits our State to practically an agricultural community.

Senator CULLOM. That is one complaint. Now, how would you cure that by law?

Mr. CUMMINS. The way to cure that is to give to the Commission the power to prescribe what the rate shall be, as I view it.

Senator CULLOM. From your town to Chicago, or from your town to anywhere else.

Mr. CUMMINS. Yes.

Senator CULLOM. Outside of the State.

Mr. CUMMINS. To fix the rate that is complained of. Now, the practical operation of it would be this: Suppose that Des Moines complained of a rate, we will say, reaching from Des Moines into Minnesota. Our manufacturer says to the Commission: "We can not reach that point upon as fair terms as our Chicago competitor can reach it, and we ought to, because we are just as well situated." The Commission investigate the question and find that that is true. Now, I do not believe that in one case out of a hundred the Commission would ever have to make a rate. The railway company would adjust that discrimination. But it will not adjust it so long as the Commission have not the power to make the rate.

Senator CULLOM. Now, in your State you complain a little that it is abused all around by being discriminated against. How would you cure it? You would put the Commission in power. Of course,

that is the first thing you want; but what is going to control them? Are they going to be controlled by the law of the long and short haul, or what will govern their acts? They must be governed by some regular rule or principle. How could they act?

Mr. CUMMINS. As I say, I would have them act, if my view were to prevail, on the cost of the service.

Senator CULLOM. On the cost of the service.

Mr. CUMMINS. That is my view of the proper basis for railway rates.

Senator CULLOM. Would you or not take into account the fact that beyond you—for instance, at Omaha—there is a competing point, not only with the river, but with the business of other railroads, and that they can go there with very little cost, coming from Chicago, for instance, more favorably than to your own point or to any of your Iowa towns, and there find facilities for a load back at a great deal better advantage than they would in a little town in your State? Would you not take that into account?

Mr. CUMMINS. Surely.

Senator CULLOM. So that, after all, the Commission would have to be covered by some general principle or general rule which would result in all the little towns of the country being at a disadvantage with the great centers. Would not that be so?

Mr. CUMMINS. I would not agree to that in all things. There are certain things in which Chicago or St. Paul or New York have a great advantage over the smaller towns of Iowa. There are other things in which we have an advantage over them.

Senator CULLOM. You complained a little in your statement this forenoon of Chicago. I hope you have no spite at our little city by the lake?

Mr. CUMMINS. None whatever. We are simply trying to emulate its greatness; that is all.

Senator CULLOM. That is very nice. Now, Governor, I do not care to continue my interrogatories to you. I think that by the time we get around this table we will get very tired of it all, so I think I will cut my investigation short. I will simply ask you this: I want to ask you whether you do not believe that the railroads of the country are violating the law less of late years than they have been in years back?

Mr. CUMMINS. A great deal less, so far as the most vicious practices, of secret rebates, and secret favors are concerned. I think they are violating the law more generally so far as discrimination between localities is concerned.

Senator CULLOM. Between what?

Mr. CUMMINS. I think they are violating it more generally day by day so far as discrimination between localities is concerned. Of course, the railroads do not regard it as discrimination. They have looked over the subject and arranged this scheme and undoubtedly they think it is right. There is no moral obliquity, in other words.

Senator CULLOM. Do they publish their rates?

Mr. CUMMINS. Certainly.

Senator CULLOM. And the rates themselves, if they are carried out, constitute a violation of what you regard as the law?

Mr. CUMMINS. Yes.

Senator CULLOM. So that there is no secret arrangement about it whatever?

Mr. CUMMINS. None whatever.

Senator CULLOM. Now, let me ask you if the original act is not sufficient to cover those violations:

All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivery, storage, or handling of such property, shall be reasonable and just, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful.

Is not that a pretty strong provision of the act?

Mr. CUMMINS. Certainly.

Senator CULLOM. And then the third section:

That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, firm, or corporation, or locality, or any particular description of traffic in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

And then comes the penalty for the violation of these provisions. Ought not that to be tolerably strong and regarded as a strong provision?

Mr. CUMMINS. It is very good, but not enough.

Senator CULLOM. Then comes the Elkins Act, under which injunctions are granted.

Mr. CUMMINS. Yes.

Senator CULLOM. Now, what more legislation would you want?

Mr. CUMMINS. I have tried to indicate.

Senator CULLOM. You simply adhere to the propositions made?

Mr. CUMMINS. I believe that there should be added to the definition of the duty of a railroad company, which is undoubtedly as complete as men can make it, the additional remedy for a violation of the law.

Senator CULLOM. You simply adhere to your first proposition, that you want a commission with power to make rates?

Mr. CUMMINS. Yes.

Senator KEAN. I have only a single question, Governor. You spoke of the people of Iowa imagining that they had a grievance, or thought they had. Have you ever seen a circular letter sent out on the 5th day of May to the manufacturers of Iowa, which I will ask to have inserted in the record without reading it.

The letter is as follows:

IOWA STATE MANUFACTURERS' ASSOCIATION,
Des Moines, May 5, 1905.

To all Iowa manufacturers.

GENTLEMEN: It will, no doubt, be interesting to you to know that Governor A. B. Cummins will represent the combined shipping interests of the State before the Senate Committee on Interstate Commerce next week. You have, no doubt, been keeping posted on some of the pending bills that have been up for consideration, in which it has been proposed to give the Interstate Commerce Commission some power over discriminations and unjust railway rates. This association has been interested in this since its organization. You, as a

manufacturer, must also be. A great victory has been scored in obtaining the Governor's consent to act in this capacity. He is fully informed on the subject, and we know he is honest and will represent the shipping interests well.

He will go before the Senate committee next week. With the retinue of railway lawyers that he will have to oppose in the premises we know that he will have a hard proposition "to go up against." The railway representatives are constantly before the various committees that have the consideration of matters of interest to them, and the shippers must also be properly represented.

It matters not whether you are a member of this association, we ask you to act with these various interests in this particular. The Governor will need the moral support of those interested, and we must give it. Write him, care Arlington Hotel, Washington, D. C., and offer such encouragement as you can. Also write a letter to the chairman of the Senate Committee on Interstate Commerce, Hon. Stephen B. Elkins, and if you have any grievances, let them be specifically set forth and send them to him.

We do not believe that a favorable report will be made from the Senate committee that will savor of giving more power to the Interstate Commerce Commission, but we do have great hopes that a minority report will be made to the Senate, and when once in the hands of the members, "something will be doing." Over 500 commercial organizations in the United States are watching their Congressional delegations and will call them to account on this one question.

This is a circular letter, and even if it was original and personal, we do not ask for an answer to it, but don't fail to write the letters to the parties above named if you have any interest whatever in the matter.

Trusting that you will see your way clear to act in harmony with the other shippers of the State, I remain,

Very truly, yours,

A. C. HUTCHINS, *State Representative.*

P. S.—If in your shipping you have had any gross discriminations, or know of any, would it not be a good idea to have them fully set forth and sworn to, in order that the governor may have facts instead of uncertain statements to place before the committee?

A. C. H.

Mr. CUMMINS. I have not seen this circular before.

Senator KEAN. It is quite interesting reading.

Mr. CUMMINS. I am delighted to receive so high a compliment as that contained in this circular. It gratifies me so much that I can scarcely go on with the rest of the document.

Senator KEAN. I do not want to ask you many questions about it. I only want to ask you about Mr. Hutchins, who signs that letter.

Mr. CUMMINS. He is the secretary of the association.

Mr. CUMMINS. I am delighted to receive so high a compliment as State representative of the Iowa Manufacturers' Association. Do you know Mr. Hutchins?

Mr. CUMMINS. I do.

Senator KEAN. What is his occupation?

Mr. CUMMINS. When I first knew him he was county superin-

tendent of Dallas County. I believe after that he became a student of medicine, and while engaged in pursuing his studies along that line he was appointed by the Iowa St. Louis Exposition commission as manager of the bureau of manufactures. From that, I assume he has graduated into the leadership or the representativeship of the Iowa Manufacturers' Association.

Senator KEAN. He is neither a shipper nor a manufacturer himself?

Mr. CUMMINS. I think not; I am sure not.

Senator KEAN. Where is this manufacturers' association of his located?

Mr. CUMMINS. This is simply an association of manufacturers.

Senator KEAN. Yes; so I understand.

Mr. CUMMINS. It has no location save its office.

Senator KEAN. Save its office in Des Moines.

Mr. CUMMINS. I do not know whether its office is in Des Moines or Cedar Rapids.

Senator DOLLIVER. Mr. Chairman, I do not like to be ungracious about this, but it appears to me that is immaterial. The Iowa Manufacturers' Association is one of the best known industrial organizations in Iowa. I am very sure my friend from New Jersey would not desire to pursue an ungracious cross-examination of Governor Cummins in respect to that.

Senator KEAN. Oh, certainly not. I have only one other question to ask. How many concerns are comprised in the Iowa Manufacturers' Association?

Mr. CUMMINS. I do not know.

Senator KEAN. That is all.

Senator DOLLIVER. The president of it is the president of a boot and shoe manufactory in the town in which I live, and is one of the leading business men in our State.

Senator FORAKER. Governor, I understood you to say that you did not believe in a maximum rate?

Mr. CUMMINS. You misunderstood me.

Senator FORAKER. You do believe in a maximum rate, then?

Mr. CUMMINS. There are circumstances under which I believe in a maximum rate. There are times when a mere maximum rate would not accomplish anything, if the particular railway or other railways covering the same territory were at liberty to change their rates so as to preserve the old relations.

Senator FORAKER. So you think, therefore, that the Commission should have a power beyond that of merely fixing the maximum rate?

Mr. CUMMINS. I think so.

Senator FORAKER. I call your attention to the fact that the Attorney-General in his opinion has not gone further than to say that the Government has the power, through its legislative department, to fix the maximum rate. If he should mean by that to have us understand that that is as far as they can go, would that affect your judgment as to the efficiency of the legislation you have been advocating?

Mr. CUMMINS. No; it would not. So far as the income of railway property is concerned, and as affecting its income, I do not believe that the legislature could do more than fix a maximum rate, leaving the railway company to diminish its income if it wanted to do it by

putting in a lower rate, but when it came to the supervision of discriminations, which are not directed toward revenue principally, then I believe that the Congress or the Commission may fix a specific rate as well as a maximum rate.

Senator FORAKER. Would you think that the Commission, being properly empowered first by Congress, would have the right to fix a minimum rate also, in case it seemed to require it?

Mr. CUMMINS. I think so.

Senator FORAKER. We were told by some one on the stand, I think, yesterday, that the rate on wheat from the Missouri territory to New York, when intended for export, was 13 cents per hundredweight, while when intended for consumption it was 25½ cents per hundredweight, and that there was a discrimination. Would you think it would be right for the Commission to be empowered to fix a minimum rate there as well as to fix a maximum rate?

Mr. CUMMINS. That is a case of discrimination. I take it that we are not legislating for the protection of the consumer in England or Germany or France, and I doubt whether Congress could authorize such a thing to protect them from discrimination; but if it discriminated amongst our own people, I think then Congress has the power to do it, and the Commission should have the power to do it.

Senator FORAKER. We were told by Mr. Bacon, who made the statement, that that is operating to the prejudice of the millers of this country, because it sends the wheat out of the country instead of keeping it here, where it might be manufactured by them into flour. He was asked how he would remedy that, and I am not sure that he gave us an answer that anybody was entirely satisfied with. I remember that he was asked whether he would pull down the one rate or pull up the other.

Mr. CUMMINS. Well, I doubt very much—this is a first impression, of course—whether we could fix a minimum rate under those circumstances.

Senator FORAKER. So there might be circumstances when they could not fix the minimum rate?

Mr. CUMMINS. I believe there might.

Senator FORAKER. You told us in your opening remarks that you made here this morning that one of the difficulties that Iowa is experiencing is that these rates that take everything out of the State interfere with the development of manufacturing there?

Mr. CUMMINS. I did not put it quite that way.

Senator FORAKER. Well, that is the effect, is it not, of what you said?

Mr. CUMMINS. I said that what we wanted was diversification of industry.

Senator FORAKER. Yes; you want to keep those products at home to manufacture?

Mr. CUMMINS. We want more people who are so situated that they will consume our agricultural products. If they were there, there would be less of these things to export from the State.

Senator FORAKER. Well, did you not intend us to get the idea that these very low rates for long distances operate to the prejudice of manufacturing in Iowa? I only want to understand what you said, and am only trying to get at the true meaning of it. Did you not so intend?

Mr. CUMMINS. I did not.

Senator FORAKER. You did not intend to give us that idea. Well, then, what was your point in that connection?

Mr. CUMMINS. My point was that the rates, which do not permit our manufacturers to reach their markets outside of the State upon fair terms as compared with the rates from Chicago, or St. Paul, or Omaha, or St. Louis, prevent the investment of capital in our State by manufacturers, and therefore that our population in that direction does not grow.

Senator FORAKER. You complain, then, of the rates on manufactured products?

Mr. CUMMINS. Altogether.

Senator FORAKER. And not on the raw material?

Mr. CUMMINS. I have not complained of the rates upon raw material at all.

Senator FORAKER. Do you think the rates are too low on your live stock that you are sending to market from Iowa?

Mr. CUMMINS. No; I do not.

Senator FORAKER. Do you think the rates are too high on the manufactured products?

Mr. CUMMINS. Either our rates are too high or the other rates are too low.

Senator FORAKER. Which other rates?

Mr. CUMMINS. I do not pretend to say which.

Senator FORAKER. Well, I mean the rates on the live stock or the rates on the dressed meat.

Mr. CUMMINS. You asked me if the rates on live stock were too high. I say I think not.

Senator FORAKER. No; I asked you if the rates on live stock were too low, and you said you thought not.

Mr. CUMMINS. I think not.

Senator FORAKER. Then I asked you if you thought the rates were too high on dressed meats.

Mr. CUMMINS. I do not think the rates are too low on dressed meat.

Senator FORAKER. Are they too high? You said you could not get to the market in successful competition with other points.

Mr. CUMMINS. Understand me. I believe that the rates on the packing-house product are too high if they be fixed at the same rate as that on live hogs. You will distinguish between the packing-house product and the dressed meats, of course.

Senator FORAKER. Yes.

Mr. CUMMINS. I believe the rate on packing-house products is too high if it be fixed at the same rate as that on live hogs.

Senator FORAKER. That is the rate that was fixed by the Interstate Commerce Commission.

Mr. CUMMINS. It is.

Senator FORAKER. And you think the Interstate Commerce Commission made a mistake in fixing rates in that case?

Mr. CUMMINS. A most grievous mistake, in my judgment.

Senator FORAKER. But you think they would do better if they were given the whole job of fixing rates?

Mr. CUMMINS. I do not know whether they would do any better in that particular instance or not.

Senator FORAKER. Well, I mean in any instance.

Mr. CUMMINS. I do not condemn either the competency or the integrity of the tribunal for the reason that it does not agree with me.

Senator FORAKER. I only want to find out what is the thing that makes your trouble. Now, you were asked something about the rates on cattle. I think you said that cattle shipped to the markets from points beyond the Missouri River were allowed to stop off and feed and then go on upon through rates, or something like that.

Mr. CUMMINS. So I have been informed—west of the Missouri River.

Senator FORAKER. And that that was a discrimination against the cattle that are shipped to the markets from Iowa?

Mr. CUMMINS. Undoubtedly.

Senator FORAKER. Is the same privilege allowed you by the railroad on cattle shipped from Iowa to the markets?

Mr. CUMMINS. Not so far as I am advised.

Senator FORAKER. I have been told that cattle shipped from Iowa which the owner desires to stop off for feeding, and so forth, are allowed a special rate and deduction, which is intended to equalize the very thing you complain of—a deduction of 25 per cent, I think. Can you tell us whether that is true or not?

Mr. CUMMINS. I can not tell you whether that is true. If it be true, I have not heard of it, and my investigation has been of such recent date that if it be true now it must have been installed at a very recent time.

Senator FORAKER. We will assume then that there is nothing of the kind. If there is nothing of the kind, you say with great plausibility that Iowa is being discriminated against by the rates given to cattle from Nebraska as contradistinguished from the rates given to cattle from Iowa. That is your opinion, is it not?

Mr. CUMMINS. In that instance I thought it was a discrimination.

Senator FORAKER. Well, now, there is a complete remedy, is there not, afforded by the law for just that thing?

Mr. CUMMINS. Not as I view it. There is a remedy. I do not regard it as either complete or effective.

Senator FORAKER. I refer to section 3 of the Elkins law.

Mr. CUMMINS. I assumed that you did.

Senator FORAKER. We gave that a great deal of consideration, and we thought we were meeting just such difficulties as you now mention when we enacted that statute. Under that statute anybody could move the Interstate Commerce Commission to go into court—at any expense of the Government, the shipper not being subjected to any bother with it at all—make complaint in a court of competent jurisdiction, and have the question passed upon by the judge. This practice that you speak of complainingly has been going on, as I understood you to say, for years.

Mr. CUMMINS. I think so.

Senator FORAKER. To the great prejudice of the packing interests in your State, which have been nearly destroyed by it.

Mr. CUMMINS. This has nothing to do with the packing interests at all.

Senator FORAKER. I was perhaps in error in connecting this with the packing industry, but this general discrimination has been going

on, and this particular discrimination in the shipment of live stock has been going on, since long prior to the passage of the Elkins law.

Mr. CUMMINS. I think so.

Senator FORAKER. You have a United States circuit judge and a United States district judge for Iowa, both very able men, are they not?

Mr. CUMMINS. We have two district judges in Iowa.

Senator FORAKER. Men of ability and men of high character. There is no distrust of them, is there, among the people of Iowa?

Mr. CUMMINS. I think the people generally have very great confidence in them.

Senator FORAKER. They do all over the country. They are known not only in Iowa, but among the profession from one end of the country to the other. Now, for more than two years you have had a law on the statute books that was intended to reach exactly that sort of thing. Has there ever been any suit instituted?

Mr. CUMMINS. I never heard of one.

Senator FORAKER. The law provides that it shall be the duty of the court upon such complaint being made to proceed summarily—that is, to postpone all other business, something that we thought might work very disastrously to the rights of private litigants when we enacted it. It is the duty of the court to proceed summarily to hear this complaint and decide it, yet there has been no effort at all to invoke the authority of the courts in a case of this kind, as I understand it.

Mr. CUMMINS. While you state the case correctly, you may not impute the right reason for the failure to appeal to the court.

Senator FORAKER. What is the reason for the failure?

Mr. CUMMINS. I do not know, save by inference. I would say that the proper reason is that the remedy that can be afforded by the court is not effective.

Senator FORAKER. Well, they could enjoin any further discrimination of that character.

Mr. CUMMINS. They could enjoin that specific discrimination. They could not enjoin any discrimination of a general character.

Senator FORAKER. They could enjoin the railroads, I should say, from further discriminating in that way in the general matter of livestock shipments. It would reach all shipments, and all the railroads interested could be made parties to the same suit.

Mr. CUMMINS. I doubt whether any court could issue a decree against one railroad or many railroads enjoining them generally against discrimination. They could say, "You shall not continue that practice longer." Now, what the railroads would do in response to that decree I do not know, and I think our people have so much doubt that they therefore do not resort to that remedy.

Senator FORAKER. We will come to that in a minute. There is only one specific thing complained of, and that is the reason I take this for illustration. It is just one act that constitutes the whole offense, and I do not see how you can imagine there is any difficulty about making all the roads that offend parties to a suit, because the law expressly provides that you may do that, and the court if it finds that it is a discrimination which is undue or forbidden by law shall enjoin. Now, one other thing, for I want to hurry on, because you have been a long while on the stand. I understood you to say

that there was no general complaint against rates that they were too high per se.

Mr. CUMMINS. There is none so far as I know.

Senator FORAKER. You deduced from some figures that you gave us an inference that they were probably too high—that is to say, you gave us the gross earnings and the gross operating expenses, and then you made a calculation as to how much interest the net earnings would pay on the gross investment, and you thought they were earning more than they ought to be allowed to earn. In no other way than that have you undertaken to show that the rates are too high, have you?

Mr. CUMMINS. I said that they were earning more than was necessary to make a fair return upon the capital invested in the properties. I did not say that they were earning so much more as would create the necessity for governmental interference.

Senator FORAKER. And you do not think that either, so far as that mere matter is concerned, do you?

Mr. CUMMINS. No; my own individual opinion is that the rates as a whole can very well be permitted to stand—I mean the income as a whole.

Senator FORAKER. The rates have been constantly coming down until the last two years——

Senator NEWLANDS. You say the income as a whole.

Mr. CUMMINS. The income as a whole.

Senator FORAKER. I want to ask you whether in computing operating expenses you took into account taxes? They are not generally included under the head of operating expenses.

Mr. CUMMINS. The report of the Interstate Commerce Commission does not say whether or not taxes are considered in its totals. Knowing a little about their plans, however, I think the taxes are not included in the operating expenses.

Senator FORAKER. I think you are right about that; and I think it is also true perhaps that they do not include anything paid on account of interest.

Mr. CUMMINS. I am quite sure of that.

Senator FORAKER. Interest and taxes are omitted.

Mr. CUMMINS. Yes.

Senator FORAKER. But they would of course have to be deducted out of the net earnings before you could really determine how much the companies had earned in the aggregate on their investment.

Mr. CUMMINS. That might be true of taxes; but not of interest.

Senator FORAKER. Well, it would be of interest when you come to the question of paying dividends on the stock.

Mr. CUMMINS. Yes; but I mean as to paying a return on the investment.

Senator FORAKER. Now, Governor, one other thing. Assuming then that the rates are not too high, the next serious question that our attention has been called to is that of rebates, and our information has been, and I understand you also to state, that since the Elkins law, particularly, rebates have been practically broken up.

Mr. CUMMINS. I did not say so, but what I said was that I believed that Congress had done everything in its power to break up that practice.

Senator FORAKER. I understood you to say that Congress had done that, and that you were of the opinion that the practice was broken up; but that is immaterial. You can state now what you mean.

Mr. CUMMINS. Well, I don't know. I am reasoning simply on the natural man as I know him. I believe that so long as there is competition among the railroads in securing business, so long they will find some way of getting that business through favors.

Senator FORAKER. Well, that is the fault of the man and not the fault of the law.

Mr. CUMMINS. Entirely. I tried to make that perfectly clear. It is the fault of the man.

Senator FORAKER. You believe that the law is all that we can be asked to make it in that respect?

Mr. CUMMINS. I think it is.

Senator NEWLANDS. There may be some fault with the administration of the law, may there not?

Senator FORAKER. Well, that would be the fault of another man, that is all. I agree with what you say. So we are all agreed that the law prohibiting rates is clear and positive and easy to enforce, is it not?

Mr. CUMMINS. It seems to me so.

Senator FORAKER. Now, we have got rid of rebates and got rid of rates, so far as we can manage them. Aside from that, if the Commission were to make the rates, there would be the same temptation for the railroad men to give rebates.

Mr. CUMMINS. Just the same; it would make no difference whatever.

Senator FORAKER. Then what is left except discriminations?

Mr. CUMMINS. I tried to make it clear in the beginning that that is the only thing that was existing.

Senator FORAKER. Well, I agree with you; but I wanted you to state it again, in answer to me, for a reason. We have only discrimination left, but there is a great variety of discrimination.

Mr. CUMMINS. Oh, yes.

Senator FORAKER. For instance, now, there is the discrimination between localities, and that is the principal discrimination that you have complained about.

Mr. CUMMINS. Two kinds; discriminations as between localities and discriminations between competitive traffic, though possibly not of the same form.

Senator FORAKER. Well, explain what you mean by the last, so that I may understand you.

Mr. CUMMINS. I cite the instance, without saying anything about the merits of the controversy, the instance cited by the chairman as a case of competition between traffic; that is, the rate on live hogs as compared with the rate on the packing-house products.

Senator FORAKER. What you were talking about a moment ago.

Mr. CUMMINS. That is, the rate on the one might very seriously affect the business in the other.

Senator FORAKER. That was a very extended hearing you had before the Interstate Commerce Commission on that question, was it not?

Mr. CUMMINS. It was.

Senator FORAKER. How long a time did it continue?

Mr. CUMMINS. Oh, I don't remember, Senator.

Senator FORAKER. It is one of the celebrated cases that has been before the Interstate Commerce Commission, is it not?

Mr. CUMMINS. I think it is a very well-known case.

Senator FORAKER. Well known, I mean to the profession, and to all men who pay attention to those things.

Mr. CUMMINS. I prepared our side of it as carefully as I knew how to prepare a case.

Senator FORAKER. Somebody said the other day that he lost his case because the lawyer on the other side had more influence with the Interstate Commerce Commission.

Mr. CUMMINS. That I lost that case?

Senator FORAKER. No; he said that some lawyer had given that excuse.

Mr. CUMMINS. I do not give you any such excuse.

Senator FORAKER. You lost it, but you did not lose it because your case lacked merits?

Mr. CUMMINS. I never lost a case in my life that I thought was lost on its merits, and I have practiced law twenty-seven years. I have lost many cases, too.

Senator FORAKER. You think that the Commission in that case simply made a downright, unqualified error?

Mr. CUMMINS. That it made a mistake.

Senator FORAKER. And a serious one.

Mr. CUMMINS. Yes; just as many judges have done in my cases before.

Senator FORAKER. Now, I have called your attention to what the Elkins law provides, and you can get at that question in that way, if we are not in error. Now, take the case of localities. The discrimination between localities is a serious difficulty. Almost every place that is a little bit out of the general line of through traffic thinks it is discriminated against by somebody in some way.

Mr. CUMMINS. I do not speak advisedly on that point, but I know that our town, and I would not be surprised if a great many others, felt the same way.

Senator FORAKER. That is, Des Moines is complaining of Fort Dodge and Fort Dodge is complaining of Des Moines——

Mr. CUMMINS. I am speaking now of Iowa as a community.

Senator FORAKER. The whole State?

Mr. CUMMINS. Yes.

Senator FORAKER. Now, the Supreme Court of the United States has held, since the Elkins law was enacted, that for the difficulty of discrimination between localities the Elkins law provides a remedy by injunction, so that whenever a locality wants to make that complaint all it has to do is to go into court, and it shall be the business of the court to proceed immediately, summarily, to hear and determine whether or not there is any merit in that complaint.

Mr. CUMMINS. Yes, sir.

Senator FORAKER. I did not succeed in getting you to say how long you were trying that case of discrimination before the Interstate Commerce Commission, but you were at it for months, were you not?

Mr. CUMMINS. Well, I don't remember that is was months; months

intervened between the beginning of the controversy and its termination.

Senator FORAKER. Yes; but here now you would go at once into the court, and the court would proceed immediately to hear that complaint. Would not that be a better remedy than the one you had in the other case?

Mr. CUMMINS. I find it not easy to make the distinction that I desire in answering that question; I myself have great confidence in the courts.

Senator FORAKER. You have not fully retired from the practice of the law yet?

Mr. CUMMINS. If I could bring together four or five of the judges and submit my controversy to them, and they had the same power that is proposed to be given to the Commission, I would rather submit it to them than to any commission on earth; men trained in the law and understanding the weight of evidence, and appreciating, of course, the principles of our jurisprudence; but if I had to take the remedy which the law provides for the court to award, or the remedy which we ask at the hands of the Commission, which is an entirely different remedy, I would rather have the remedy from the Commission than from the courts.

Senator FORAKER. I understand you to be of that opinion, but I only want to bring your attention to the fact that we have already conferred on the courts a power to remedy the wrong that exists in any case of alleged discrimination, if they find it.

Mr. CUMMINS. With all deference, does not that assume the entire question in dispute? If it is true that the court has the authority to grant a remedy, and an appropriate remedy, for the wrong, then there is no room for the Commission. I think the remedy that you have provided in that respect is not adequate.

Senator FORAKER. Well, it may fall short of what you have expressed a desire for in this, that the power of the courts is limited to enjoining the discrimination that is complained of; but if the court does enjoin the discrimination between the two localities that you complain of, is not that the end of it? There is no necessity to go ahead there and fix rates, as in the case of complaint about an excessive rate, is there?

Mr. CUMMINS. Well, I may not see the matter clearly, but could you indicate to me what form the decree of a court would take in such a proceeding?

Senator FORAKER. Well, you told us a while ago, as I understood you, that you were in favor of each locality standing on its own bottom, and having such advantages as natural conditions gave it, and therefore you did not believe in the long-distance haul as interpreted by the Supreme Court. In other words, you believe that the point that is nearest to the place of shipment should have the lowest rate of any number of given points and that the terminal should not have a lower rate than the intermediate point. That is what I understood you to say.

Mr. CUMMINS. Generally speaking, I think that is true.

Senator FORAKER. Well, now, there is a case. Would there be any trouble whatever in having the court enjoin a road from granting lower rates to the terminal than to the intermediate points?

Mr. CUMMINS. None whatever; but take the case that I first put in my written statement. Dubuque wants to send pumps, we will say, to a point 50 miles away, in Wisconsin. Now, it costs the Dubuque manufacturer a little more to produce his article than it does the Chicago manufactory, because he is farther away from the raw material. He has had to put his raw material into Dubuque. He goes to this point and he finds that there is the same rate on pumps from Chicago, 200 miles away, that there is from Dubuque, while the Chicago manufacturer can produce his article a little cheaper. That is the discrimination I complain of. Now, suppose that were brought into court, what kind of a decree could the court enter that would effectually arrest that discrimination?

Senator FORAKER. Well, there might be some difficulty about entering a decree that would exactly meet the views of the complainants, but there certainly would not be any difficulty about the court examining into the question and determining whether or not you were really discriminated against, and if so, in enjoining the discrimination.

Mr. CUMMINS. Not at all.

Senator FORAKER. And the court would have to find in what the discrimination consisted, would it not?

Mr. CUMMINS. Well, I am very far from being here to say that there is not some remedy for these things. Congress has been doing its best in endeavoring to find these remedies.

Senator FORAKER. We are very glad to have you here, because we want to get at the points in this controversy, and we want the benefit of your views and those of everybody else. I am only asking these questions to elicit your views.

Mr. CUMMINS. Oh, certainly, I understand that, and I am very glad to develop my limited information to its fullest extent.

Senator FORAKER. You spoke about Iowa becoming a great manufacturing State under other circumstances, and said something about Iowa having cheap fuel. Is it true that you have an abundance of cheap fuel in Iowa? I suppose you refer to coal.

Mr. CUMMINS. Yes; it is true.

Senator FORAKER. You have an abundance of coal there? I always understood you were a little short of coal as compared with Illinois and some adjacent States.

Mr. CUMMINS. Oh, no, sir. We have not as much as Pennsylvania, but we have a good coal supply.

Senator DOLLIVER. We are the sixth State in that respect.

Mr. CUMMINS. Possibly we have not as much as Illinois, but we have an abundance of coal to run us through two or three generations to come.

Senator FORAKER. I have heard somebody make the statement in connection with this examination that your coal was not of unlimited quantity or of extremely good quality.

Mr. CUMMINS. It is not of the highest quality, but for purposes of manufacturing, for producing steam, it probably compares very favorably with that of any other State.

Senator FORAKER. You spoke of each city having the benefit of its own natural advantages. What are the natural advantages? Will you please enumerate what is in your mind in that connection?

Mr. CUMMINS. Do you mean so far as Iowa is concerned?

Senator FORAKER. No; any place. Here are two points to which you want to ship. One is a thousand miles away from you and the other is only 500 miles away from you. Of course distance would be one natural advantage, I suppose, that you would mention, but what are the others?

Mr. CUMMINS. So far as manufacturing is concerned, cheap fuel is one.

Senator FORAKER. Would you or not give credit to the city a thousand miles away, in the case I put, if it had the advantage of water transportation and the other did not have it?

Mr. CUMMINS. That is an entirely different problem and one which, I see, has been very much discussed here, as to whether the railroad rates should be governed by water competition.

Senator FORAKER. Well, as a matter of fact they do have to be governed by water competition, do they not, when they are compelled to meet water competition?

Mr. CUMMINS. If they get the business.

Senator FORAKER. Yes; they will either meet the water competition or go out of business.

Mr. CUMMINS. I think water competition, however, in many instances is much as I heard it expressed the other day down in Dallas, Tex., that they were bound to improve a river up from Dallas, not with the expectation that any traffic would ever be moved upon it, but merely to create a waterway that might compel the reduction of rates. Now, there are a great many kinds of traffic where low rates are put in, as I think, upon the suggestion of water competition that never would be carried upon the water.

Senator FORAKER. Well, you might differentiate almost without limit, I suppose, but what I wanted to get at is what is taken into consideration in determining the natural conditions that would control rates? Is a place discriminated against in the making of a rate for that reason? I do not mean unlawfully discriminated against, but is it to be given a lower rate when it has advantages such as water transportation may give or such as being a competitive point? Is it to be discriminated against simply because it is farther away from the shipper? Is it not nearer to him in the matter of rate making? To illustrate, to bring it home, I live in Cincinnati. Atlanta is not anything like so far away from Cincinnati as it is from New York, and yet New York has a rate that it is very hard for us at Cincinnati to compete with in the Atlanta markets. For a long while they drove us out.

Mr. CUMMINS. There is no water competition there.

Senator FORAKER. Yes; part water and part rail. They ship by water down to Savannah, and it is a short transportation by rail from Savannah up to Atlanta, and the result is they make a lower rate. The water transportation enters into that. Cincinnati made a vigorous complaint and went before the Interstate Commerce Commission to get relief.

Mr. CUMMINS. I believe the Interstate Commerce Commission has decided, as I remember it, that everything has to yield to water competition.

Senator FORAKER. Well, I simply want to know whether you think Atlanta ought to have the benefit of that water transportation in enumerating her natural advantages.

Mr. CUMMINS. I think she ought.

Senator FORAKER. She would be entitled to it; so that the distance haul would not be a safe basis on which to determine rates.

Mr. CUMMINS. Well, it is not the sole guide. In taking the affairs of a country as large as ours and as much diversified as ours it is not the sole guide. I would make that plain.

Senator FORAKER. All those things have to be taken into consideration. Now, you thought the cost of the service was the true basis upon which to determine what the rate should be?

Mr. CUMMINS. That is the initial principle, in my judgment.

Senator FORAKER. Now, let us take the case of Cincinnati and Atlanta and New York. Would not the cost of the service probably be the same if they were equidistant from each other; and if so, would not New York, with the advantage of water transportation, have a great advantage over Cincinnati?

Mr. CUMMINS. It might, or it might not. Whether the railway company should attempt to compete with the water, recognizing that the water transportation is so very much cheaper, I have grave doubts. It is a point upon which my opinion is of very little value.

Senator FORAKER. You think that the railroads hardly ought to undertake to compete with the water transportation?

Mr. CUMMINS. I do not believe that a railroad ought to attempt to do business at less than cost and collect the deficit from some other community.

Senator FORAKER. The railroads should simply let the business go by water, if the water could do the business more cheaply?

Mr. CUMMINS. If I were constructing an ideal country that would be so.

Senator FORAKER. Well, we have expended several hundred million dollars in improving the water transportation in the Great Lakes in trying to make this an ideal country in this regard, that we would thereby compel the railroads to lower their rates of transportation, and we find farther west that we have had very beneficial results.

Mr. CUMMINS. I did not know that was the motive of the expenditure.

Senator FORAKER. That is one of the motives. The general development of the country has been another motive, I suppose, but it has always been contended by those who have advocated the improvement of harbors and channels in our lakes that it would bring down the rates of railroad transportation as well as cheapen the water transportation.

Mr. CUMMINS. It has brought down the railroad transportation, undoubtedly.

Senator FORAKER. I saw it stated only a few days ago, somewhere, that there was a time when it cost 26 cents a bushel to take wheat from Milwaukee to Buffalo. Now you can take it at about 1 cent per bushel.

Mr. CUMMINS There was a time when it cost about 26 cents a bushel to deliver it at a point a hundred miles distant in Iowa.

Senator FORAKER. Yes; but by making water transportation so cheap to the degree I have indicated we have not only made cheap water transportation, but the railroads have been compelled to meet

that competition, and that has been a great factor in lessening the rates that are charged.

Mr. CUMMINS. I think it has been a very great factor, but I doubt whether any railway ought to attempt to meet the competition when it involves continuous transportation below cost.

Senator FORAKER. Well, I suppose the railroad, inasmuch as it is operating its cars there, gets something out of the business, and some substantial advantage in the long run.

Mr. CUMMINS. But coming back to the original proposition, when you assume that a city that has a harbor—a good harbor or water transportation—is entitled to that advantage, I think you have stated a fact.

Senator FORAKER. It is entitled to those advantages.

Mr. CUMMINS. I believe that; but whether the railroad company shall compete with the water transportation is quite a different question.

Senator FORAKER. Now, is it not true that it is only because of this cheapening of water transportation, and the competition of railroads with water transportation, that rates for long-distance hauls, as from Iowa to New York, on grain and live stock and everything else, have been brought down to the low point where they are?

Mr. CUMMINS. I think not; that is not the sole cause

Senator FORAKER. Well, I do not mean the sole cause, but I should have said, if I did not, that it is a very important factor in working these reductions.

Mr. CUMMINS. I think there are times, and possibly all the time, when the transportation upon the Lakes has a tendency to reduce the rates on grain toward the East.

Senator FORAKER. The State of New York is about to reconstruct her canal from Lake Erie to the Hudson River, which gives water transportation from the Great Lakes to New York City, with the idea, as the newspapers inform us, of not only having cheap transportation on the canal, but of forcing low rates on the railroads which must compete with it. Is not that so?

Mr. CUMMINS. Well, I see that it is projected. I supposed it was intended simply to afford another means of transportation.

Senator FORAKER. I understood you to say a while ago that Iowa does enjoy cheap rates to New York and to Atlantic seaports for her grain, live stock, and so forth, and so on?

Mr. CUMMINS. I do not think she enjoys unduly cheap rates upon her live stock, and only at times unduly cheap rates as to her grain.

Senator FORAKER. What I want to get at, I understood you also to say, in answer to Senator Cullom, that anything that changed that situation you would regard as disastrous in its effects upon Iowa?

Mr. CUMMINS. I do not think I put it quite so strongly as that. There might be something of a change for the better.

Senator FORAKER. I do not want to state your language any more strongly than you put it, but I understood you to say——

Mr. CUMMINS. I think I did not state that. I think I did say that anything that substantially increased those rates would not result well for Iowa.

Senator FORAKER. I noted it down here "would be disastrous." I do not remember that you used those exact words. I do not want

to stick upon words or anything of that sort. I only want to bring home to yourself, if I can, from your own statement, the fact that you have expressed an appreciation for the benefits that have resulted to your State of Iowa from these very low rates which have come about through competition of railroads with one another and with water transportation.

Mr. CUMMINS. Oh, if you mean that I have expressed appreciation for the general development of our transportation systems, by which the rates have been very greatly reduced, you can express it in the most absolute terms possible. I have very great appreciation for it.

Senator FORAKER. There is no question about that at all. Then I understood you to say this morning, something which I thought was a little surprising—I may have misunderstood you, and it is quite possible I did, in view of your present statement—that you did not really regard the producers of butter and eggs in Iowa as having been benefited by the reduction of rates that give them a market for their butter and eggs in New York and these other large cities?

Mr. CUMMINS. No; what I said was this—I do not recall the exact terms in which I expressed myself—what I said was that we were not especially benefited by having the rate the same as the producers of like articles in New Hampshire and Vermont enjoyed, for the reason that Boston and the crowded communities of the East required more butter and eggs than can possibly be produced in New England, and they must have either Iowa butter or Wisconsin butter or Minnesota butter and eggs. Therefore our butter and eggs would go there anyhow, but if we had to pay a higher rate they would cost the consumer a little more, and the producer in New England would get a higher price for his product and therefore be more prosperous.

Senator FORAKER. That is substantially what I understood you to say this morning, that there was no real benefit in it, because you would have the market anyhow—because people must have butter and eggs.

Mr. CUMMINS. Unless, as the chairman very wisely suggested, we should raise it up to so high a point that the common people could not eat butter and eggs, and then, I think, the markets might be very much diminished.

Senator FORAKER. Now, we had a witness on the stand yesterday who told us he was manufacturing lumber in Minnesota and selling it in a number of States, among others in Iowa, and he told us he had to sell his lumber in Sioux City, Iowa, in competition with lumber brought from Seattle; that the rate to him was 20 cents per thousand, and that the rate from Seattle was 40 cents a thousand. Now, he thought that on lumber there ought to be—looking only to himself—a distance rate. What do you think is the effect on the users and consumers of lumber in Iowa of having that competition between Seattle and Minnesota?

Mr. CUMMINS. The effect is very good.

Senator FORAKER. It is very good; in other words, the long-distance low rate is a very great benefit to the people of Iowa?

Mr. CUMMINS. It is to some of the people in Iowa; but what I have tried to say is that I would rather have somebody else measure up these opposing compensations than to have the railways final arbiter of them.

Senator FORAKER. Well, we want to get simply all the information we can. That is the only purpose we have, and we think somebody ought to fix these rates, but we have not made up our minds yet who should fix them. I want to know whether it is any advantage to a community to have the cheap long haul for a commodity that goes into general use, like lumber, or a commodity, if you are the seller, that is generally used for consumption in New York and other cities, like butter and eggs.

Mr. CUMMINS. That depends entirely on the nature of the traffic and where the community is located.

Senator FORAKER. This witness told us that if he did not have to meet that competition he could get $3 a thousand more for his lumber in Sioux City.

Mr. CUMMINS. Who said that?

Senator FORAKER. Mr. Shevlin, the witness I referred to.

Mr. CUMMINS. I do not think he could. Of course he knows more about the subject than I do, for he is a lumberman and I am not.

Senator FORAKER. Without wishing to disparage your information, I was about to say that I thought we could assume that he, being in the business, would have superior opportunity for information on the subject.

Mr. CUMMINS. I do not think the 40-cent rate from the Pacific coast, if there be such a rate, would make a difference of $3 a thousand to the people of Iowa, in view of the other sources from which lumber may be obtained.

Senator FORAKER. No; what he said was that he had to pay 20 cents to transport the lumber from his place of business in Minnesota down to Sioux City, and that if the Seattle competitor had to pay in the same proportion it would make the cost of the lumber, on account of the increased rate, so great that he could get $3 a thousand more on his Minnesota lumber.

Mr. CUMMINS. Of course, that statement is based upon the assumption that the Seattle competitor is the only one Mr. Shevlin has, which is not true, as I understand the case.

Senator FORAKER. There are not as many lumber competitors now as there were a few years ago in that part of the country, are there?

Mr. CUMMINS. There are not as many sawmills along the Mississippi River, or in that vicinity, as there used to be, but there is still that competition.

Senator FORAKER. I think that is all. I am very much obliged to you.

Senator DOLLIVER. I think, Mr. Chairman, in view of the long time Governor Cummins has been on the stand, and in view of the lateness of the hour, I will waive my right of examination. I should like to ask some questions about the packing industry, but in view of the fact that there are packing interests in Minnesota, I think I will yield to Senator Clapp.

Senator CLAPP. Well, I know nothing about the packing industry in particular.

Senator DOLLIVER. I was informed by the Great Western Railway people that there is at Austin, in Minnesota, a well-equipped meat packing institution that flourishes nicely, without any complaints to the Interstate Commerce Commission about rates.

Senator CLAPP. There is at Austin, Minn., a very successful packing institution, and we wired the president of it to come down here. We find that he is in Europe, and we can not get him here for that reason.

Senator DOLLIVER. That sounds like prosperity in Austin.

Senator CLAPP. And there are several other similar industries starting in the State, but I really know nothing of the details of them.

Senator DOLLIVER. Then I will ask Governor Cummins a few questions.

You understand, Governor, that the manufacturing interests of our State show a reasonable degree of progress and prosperity during the last decade, do they not?

Mr. CUMMINS. They show a degree of prosperity and progress. I do not think they have grown as they should have grown.

Senator DOLLIVER. I notice the number of them reported in the census to have doubled between 1890 and 1900.

Mr. CUMMINS. You will remember that in taking the census of 1900 the enumerators took in all industries, including what are known as neighborhood industries, and before you make any comparison you would have to be sure that the census with which you compared it accumulated its statistics in the same way.

Senator DOLLIVER. Is it your understanding that the little cities of Iowa are adding industrial plants and that they have been doing so from time to time during the last few years, and that they are increasing in population?

Mr. CUMMINS. Yes, sir.

Senator DOLLIVER. How many packing establishments have we in Iowa?

Mr. CUMMINS. I will enumerate them. We have 1 at Sioux City, 1 at Des Moines, 1 at Marshalltown, 1 at Cedar Rapids, 1 at Ottumwa. I am not sure but there is one other, although I think not.

Senator DOLLIVER. Is it your understanding that these little packing plants are fairly prosperous?

Mr. CUMMINS. I think the one at Sioux City is prosperous. I believe the packing house at Des Moines is struggling with fair hope of success. It is comparatively a new institution.

Senator DOLLIVER. You spoke of the discrimination between the live stock and the packing-house products as being in your judgment because of the failure of our State to develop local packing enterprises. Is that, in your judgment, the main or only element in that situation?

Mr. CUMMINS. Yes.

Senator DOLLIVER. I notice in a report on the packing business in Chicago that a calculation is made by Mr. Garfield to the effect that the dressed carcass of a steer is sold by the Chicago people at an advance of only about 99 cents over the cost of the animal. Now, if that is a correct statement, and it seems to be verifiable in many ways, how would it be possible for an institution dealing only with a limited area in Iowa to get hold of a business large enough to make a living enterprise out of a packing house?

Mr. CUMMINS. You are in error in supposing that our cattle and hogs would not furnish the material for a very large establishment, and for half a dozen of them.

Senator DOLLIVER. But supposing them to be scattered generally over the State, so that each would have a local constituency.

Mr. CUMMINS. Yes; I do not suppose we could establish a packing house in every village in Iowa, but there are central places which are admirably adapted for conducting such a business. Your own city is one of them, and it formerly had a packing house.

Senator DOLLIVER. Yes; a small institution which survived for some years.

Mr. CUMMINS. It ought to have grown, but it did not grow.

Senator DOLLIVER. If it was in a situation where it could only make a profit of a dollar on each steer, or some such matter, it would have to be very large before it could produce a very considerable revenue.

Mr. CUMMINS. You are quite right; but then those who have capital and who are engaged in the work of founding these enterprises, go where they can be carried on most profitably. We have the raw material; we have the fuel; now, if the men who have capital to invest in these enterprises could manufacture and turn into the markets a product to better advantage in Iowa than they could in Chicago, they would do it, no matter——

Senator DOLLIVER. What I want to get at is whether this freight rate is the sole element in the advantage which Chicago has?

Mr. CUMMINS. I do not think it is the sole element.

Senator DOLLIVER. Is it the controlling element?

Mr. CUMMINS. There is an interest in business, an impulse to keep in the channel in which it is.

Senator DOLLIVER. You are acquainted with Mr. Stickney, of the Great Western Railway?

Mr. CUMMINS. I know Mr. Stickney very well.

Senator DOLLIVER. You are familiar with his railroad enterprise in Iowa?

Mr. CUMMINS. I am.

Senator DOLLIVER. He has told our people at Fort Dodge to go ahead and put in a packing plant, and assured them that there was nothing in the freight situation that would interfere in the slightest with their success, and has given us great exhortation to go ahead. Now, would you believe a man like that?

Mr. CUMMINS. Mr. Stickney would be quite as likely to make rates which would be satisfactory to you as any other railroad man I know of. He is now carrying a large part of the packing-house business from the Missouri River to Chicago, simply because he is willing to do it at a rate that other railroads will not meet. Mr. Ramsey suggests that he has a seven-year contract, and I believe he has, so I think he is a man you ought to get close to.

Senator DOLLIVER. Now, he asks our people to go to Austin, Minn., to see a flourishing packing plant there which is asking no additional favors from the railroads beyond those which it now receives, and he has assured our people that all we needed was a little enterprise to repeat that success at Fort Dodge.

Mr. CUMMINS. That may be true, but do you know the rates from Austin?

Senator DOLLIVER. No.

Mr. CUMMINS. Or the relative rates between the packing-house product and the live hogs?

Senator DOLLIVER. I have no doubt that some discriminations between those descriptions of traffic prevail everywhere out there.

Mr. CUMMINS. They may be exaggerated or mitigated at Austin. You can not assume that because it is true at one place therefore it is true at another.

Senator DOLLIVER. So that I understand you to say, Governor, that you regard that as the substantial grievance of our people?

Mr. CUMMINS. Oh, no; I wish to be understood as saying that that is the reason why our packing-house industries do not develop, but then that is only a part of the grievance that I have attempted to lay before you.

Senator DOLLIVER. Well, that constitutes a substantial grievance, however.

Mr. CUMMINS. I have always so regarded it, and you have seen that the Interstate Commerce Commission did not agree with me on that proposition.

Senator DOLLIVER. That is what I want to get at. The remedy you suugest for it is one that has already been tried and found wanting.

Mr. CUMMINS. However, the Commission has been changed since then.

Senator DOLLIVER. Governor, how do you account for the fact that cities situated like Des Moines have a railroad advantage in first-class and second-class freight rates over cities situated as the town is in which I reside—as you have referred to that as an illustration?

Mr. CUMMINS. I do not know why that is.

Senator DOLLIVER. I have a statement here that the rate from Chicago to Fort Dodge is 72 cents first and 58 cents second, while from Chicago to Des Moines it is 60 cents first and 50 cents second. Do you regard that as a discrimination between localities?

Mr. CUMMINS. I would have to examine the particular circumstances surrounding it in order to answer that question intelligently.

Senator DOLLIVER. There are no circumstances at all surrounding it, except that the jobbing house in Des Moines gets its supplies from Chicago at 60 cents whereas our people, who are exactly the same distance from Chicago, get their supplies for 72 cents.

Mr. CUMMINS. Assuming that the conditions are the same, it is an apparent, indefensible discrimination.

Senator NEWLANDS. Is the distance the same?

Senator DOLLIVER. Substantially.

Mr. CUMMINS. Substantially.

Senator FORAKER. Are they on the same line or on different lines?

Senator DOLLIVER. They are on different lines.

Mr. CUMMINS. They are on the same line, in substance.

Senator DOLLIVER. That is to say, the main line of the Rock Island runs to Des Moines, and a branch of it runs 80 miles to Fort Dodge. The Great Western runs to Waterloo, and all the trunk lines have little branches into Des Moines. Do you regard that as a matter that ought to be corrected—the matter to which I have referred?

Mr. CUMMINS. Yes; I make no distinction. Every discrimination of that sort ought to be investigated, and unless there be shown some reason which appeals to one's sense of equity it ought to be corrected.

Senator DOLLIVER. How ought it to be corrected? You have said that the rates are reasonable; therefore it is not probable that the *Interstate* Commerce Commission would condemn them as too high.

Mr. CUMMINS. I beg your pardon, I have not said that the rates were reasonable.

Senator DOLLIVER. I understood you to say that the complaint was not about excessive rates.

Mr. CUMMINS. I said that there was no complaint, at least no crystallized complaint, that the entire revenue of the railroads was more than they should receive; but there is a great deal of complaint with regard to the distribution of that revenue.

Senator NEWLANDS. The distribution of the burden of transportation.

Mr. CUMMINS. Yes.

Senator DOLLIVER. As I understood you, in response to Senator Foraker, you alluded rather to the entire question of the distribution of revenues—that is, the discrimination which appears between localities.

Mr. CUMMINS. Yes, certainly; and on your statement I assume that the case which you have stated would be one of them.

Senator DOLLIVER. Now, how would our people go about to remedy that? Suppose we had the Interstate Commerce Commission clothed with the power to fix rates, what would they do in a case like that?

Mr. CUMMINS. Well, Senator, if I were to suggest, I would hesitate a little, because I might mislead you, and you ought to hire a lawyer; but if I were doing it and the Commission had the power that we have been discussing here, I would lay the complaint before the Commission and ask it to investigate the matter; and if it found that there was no reason for that discrimination I would ask them to fix a rate upon that particular commodity, either raise the rate to Des Moines or lower the rate to Fort Dodge.

Senator DOLLIVER. But this man says that his rate from Chicago to Des Moines is practically made by a fellow in the same business in St. Louis, which is nearer to Des Moines, and that if the rate to Des Moines was raised above 60 cents the business would be transferred to St. Louis.

Mr. CUMMINS. I see no reason in that for refusing to exercise the power.

Senator DOLLIVER. But how would they order the railroad, whose interest was in carrying goods from Chicago, to raise its rates in such a way as to entirely destroy its business and transfer it to another city and another railroad?

Mr. CUMMINS. I do not catch your statement.

Senator DOLLIVER. I mean to say that if the railroad from Chicago to Des Moines should raise the rate to 72 cents, or raise it above what it is now, Chicago would no longer furnish this merchandise, but it would come from St. Louis, which is an active competitor of Chicago in the distribution of the merchandise.

Mr. CUMMINS. I see no objection to that.

Senator DOLLIVER. But the railroad which depended for its revenues on traffic from Chicago to Des Moines would see objection to it.

Mr. CUMMINS. Undoubtedly.

Senator DOLLIVER. And it would be hard to imagine a commission that would make an order which would practically deprive the railroad of its business, would it not?

Mr. CUMMINS. It could not make an order that would deprive the railroad of the business unless it did it at a certain rate.

Senator DOLLIVER. In other words, I am trying to find out where we would come out on this business, whether we should actually get any results.

Mr. CUMMINS. Yes—well, I think you would, in that way. I am not prepared to say that there are not many turns and twists that could be made that would prevent effectual relief for a time; but with that power on the part of the Commission these things would crystallize before very long, and if Fort Dodge was entitled to the same rate as Des Moines it would get it.

Senator DOLLIVER. Of course we could go in and claim that the 72-cent rate was unreasonable and unjust, but we probably would have great difficulty in proving that it was unreasonable and unjust.

Mr. CUMMINS. You probably could not do that, unless you would enter upon a subject that would be too great for the investigation of any one shipper or man.

Senator DOLLIVER. And we would probably fail on that proposition, and then our only remedy would be to have the Des Moines rate raised on the ground that it was not high enough, and I am afraid we would be in a deadlock in trying to get that remedied by the Interstate Commerce Commission.

Mr. CUMMINS. You state the case very strongly. It might be that Fort Dodge would never get any relief.

Senator FORAKER. I understood you to say, Governor, when I was asking you some question, that you thought the Commission should have the power to raise as well as to lower rates.

Mr. CUMMINS. Certainly. There is no other way in which discriminations can be prevented, save by either lowering or raising rates. Now, it would be very unjust to say that the Commission must always lower a rate.

Senator DOLLIVER. Suppose under the present law we took that discrimination into court, making all these roads parties to the proceedings, and set up the fact that the distance was the same and the cost of the service was the same, and that here was an obvious discrimination of 12 cents on the same merchandise between these two cities of Fort Dodge and Des Moines, and we could get the court to hear the whole evidence, and the court should find that the distance being the same and the service the same, that that discrimination did exist and that it should cease. Would that be an effective remedy for Fort Dodge?

Mr. CUMMINS. No.

Senator DOLLIVER. In what respect would that fall short?

Mr. CUMMINS. Theoretically it falls short in this respect, that the immediate discrimination is 12 cents. A discrimination of 8 cents would be just as fatal as one of 12.

Senator DOLLIVER. Suppose they should find that there should be no discrimination. Suppose the court should find that these towns were entitled to the same treatment, the circumstances and the situation being the same, and that there should be no discrimination.

Mr. CUMMINS. If you can get a decree of court of that kind, that will in effect declare a rate for the future, then, of course, you have accomplished the whole purpose, and there is no trouble about that.

Senator DOLLIVER. But the Supreme Court, in the case of the Missouri Pacific Railway *v.* Kansas City and Omaha, a suit which originated in behalf of Wichita in a very similar case, said that this matter would be heard and determined by the court in all its bearings as a matter of equity, and a decision reached upon it.

Mr. CUMMINS. Yes; and what was the decree?

Senator DOLLIVER. In that case the decree was in reference to procedure, and did not go into the merits at all.

Senator FORAKER. They sent it back for proceedings in accordance with that decree.

Mr. CUMMINS. Yes; I remember it.

Senator DOLLIVER. That was a case in which the Elkins Act was referred to. Mr. Justice Harlan held that that could have been done under the original interstate-commerce law, without the Elkins law, but the majority of the court did not hold that. Now, the question which I wish to ask is whether in a case of that sort, where I am as much interested as you could possibly be, the procedure would not be swifter and more effective to bring the matter before the court and have it fully examined, and in case the court found no other circumstances in it except such as I have alluded to, to make a decree, stating that these cities were so situated that the rate should be the same, and order the discrimination to cease. Would not that be a pretty effective remedy?

Mr. CUMMINS. I have expressed an opinion on that. I do not think it would, because you are giving the court a greater power and putting into your hypothesis a decree which is more specific than I think the court would ever enter. I repeat what I have already said, that it is better for the Commission to do that in the first instance than for the court to do it.

Senator NEWLANDS. In the case of an injunction of that kind or a suit of that kind brought by the people of Fort Dodge to enjoin a discrimination in favor of Des Moines, would not the court necessarily in that suit determine what the extent of the discrimination was and enjoin against that discrimination in its entirety? Would the court simply issue an injunction against the maintenance of this high rate, leaving it to the railroad to name a rate 1 cent below, which would give no relief? Would not the court give adequate relief and enjoin against the entire discrimination; and if it did that, would you consider that it would be an adequate remedy?

Mr. CUMMINS. I think it would be.

Senator NEWLANDS. But your question is whether the court would have the jurisdiction and power to give full and adequate relief in that case.

Mr. CUMMINS. It would be an adequate remedy if reached upon that hypothesis.

Senator DOLLIVER. Governor, in this case that I refer to, the Missouri Pacific Railway *v.* The United States, Mr. Justice White, in delivering the opinion of the court, uses this language:

> In the nature of the case it can not be ascertained from the records whether the railroad company now exacts the rate complained of as being discriminatory, and which it was the purpose of the suit to correct; but if it does, of course the power to question the legality of such rate by a suit in equity, brought like the one now here, really exists.

It would seem that their purpose was to make this a matter of equity, subject to such order as the court might make in the premises, so far as the discrimination was concerned.

Mr. CUMMINS. I have no doubt that under the law as it now exists Fort Dodge could bring a suit against the railway involved, to enjoin that discrimination. However, under your statement the entire discrimination is 12 cents per 100 pounds, whereas you would insist, or Fort Dodge would insist, that the rates should be even. Now, suppose the court—and, of course, as Senator Newlands suggests, it must go through this mental process—suppose the court should be of the opinion that there should be a rate to Des Moines 8 cents per 100 pounds less than the rate to Fort Dodge. What do you think the decree of the court would be?

Senator DOLLIVER. Well, if I have correctly interpreted the attitude of the court, they would find the maximum point at which the discrimination ceased, and enjoin the discrimination beyond that.

Mr. CUMMINS. If that be a correct interpretation of the law—an interpretation with which I do not agree, however—then the only advantage that a commission would have over a court in cases of discrimination would be, if you please, the learning and skill and experience that the members of the Commission would acquire in this general subject, which would enable them to apply the exact rules which the court would adopt a little more summarily and a little more quickly. Now, do I make myself understood?

Senator DOLLIVER. Yes; except that you might add that their order might encounter equity proceedings to restrain it.

Mr. CUMMINS. Surely, that is true.

Senator FORAKER. And it would have to be reviewed anyhow by the courts. You would necessarily have two hearings, I mean if they wanted to controvert it.

Mr. CUMMINS. I do not believe Congress could give it any power to make an order that was not susceptible of review; but, in fact, a great many orders might not be reviewed.

Senator FORAKER. I am speaking about a contested case—one before the Commission and one before the court.

Senator DOLLIVER. Now, in fact, we have had a good deal of testimony indicating that the delay that has been encountered in interstate-commerce controversies has arisen as much in the proceedings of the Commission as in the proceedings of the courts. What is your experience and observation in respect to that? One man said yesterday he was four years in getting a very simple matter decided against him.

Mr. CUMMINS. I have no such experience and no such observation as would entitle me to enter any judgment upon the members of the Commission.

Senator DOLLIVER. I do not think it would be a judgment on the members of the Commission, but rather an evidence of their care and scrupulous regard for the truth.

Mr. CUMMINS. I have not sufficient knowledge to express an opinion.

Senator NEWLANDS. You will remember that that witness when he was questioned developed the fact that the four years dated back to his commencement of the preparation of the case, and that the

actual progress of the case before the Commission was only nine months.

Senator DOLLIVER. He said he got it on the docket. I don't know what he meant by that.

Senator NEWLANDS. From the time the proceeding was commenced before the Commission to the end of the case was only nine months, but he spent the rest of the time in the preparation of the case. Now, Governor, you have thus far referred only to the cases of discrimination as existing between commercial points in your own State and commercial points in other States, under which the commercial points in your State were denied the equal opportunity of getting to markets within convenient reach. Now, how is it about such discrimination as existing between one commercial center in your State and another commercial center in the same State? Do any such conditions exist?

Mr. CUMMINS. Until Senator Dolliver called my attention to the instance you have just heard discussed such a discrimination had not come to my attention.

Senator NEWLANDS. But that was a discrimination as to interstate commerce, was it not?

Mr. CUMMINS. Yes.

Senator NEWLANDS. Now, are there any such discriminations between commercial centers in your State as to State commerce?

Mr. CUMMINS. Certainly not; because all our commerce is moved upon a different tariff rate, which applies to all the commerce.

Senator NEWLANDS. That tariff is a maximum tariff, is it not?

Mr. CUMMINS. It is a maximum tariff, but, as I understand it, the railways have uniformly and continuously charged the full maximum tariff.

Senator NEWLANDS. They in no case cut under the rates fixed by the tariff?

Mr. CUMMINS. I do not know any case in which that has been done.

Senator NEWLANDS. There is nothing to prevent them doing it.

Mr. CUMMINS. Nothing whatever.

Senator NEWLANDS. Would there be anything to prevent them, then, in your State, where there are two points, say a hundred miles distant, that are served by two rival roads in competition with each other, from giving to those points better rates than to the intermediate points?

Mr. CUMMINS. Yes, sir.

Senator NEWLANDS. There is?

Mr. CUMMINS. Our law, I think, contains the exact counterpart of the interstate-commerce law with regard to the long and short haul.

Senator NEWLANDS. But even under the interstate-commerce law relating to the long and short haul an advantage is often given, is it not, where there is competition?

Mr. CUMMINS. I think, however, that in our State there would be none of those unusual and extraordinary circumstances that seem to have warranted it elsewhere.

Senator NEWLANDS. But do you regard it as an unusual circumstance when the only competition is between railroads and where there is no water competition?

Mr. CUMMINS. You are asking now my own opinion?

Senator NEWLANDS. Yes.

Mr. CUMMINS. No; I do not think those constitute such circumstances.

Senator NEWLANDS. But the interstate-commerce clause, or the long and short haul clause of the interstate-commerce act, has been so interpreted, has it not?

Mr. CUMMINS. I think so.

Senator NEWLANDS. You can not tell, then, how many places in your State enjoy in interstate commerce advantages over other places—discriminating advantages—as to rates?

Mr. CUMMINS. Do you mean——

Senator NEWLANDS. This case of Des Moines and Fort Dodge is the only one that has been called to your attention, is it?

Mr. CUMMINS. I think it is. I believe that the same concern that called this instance to the attention of Senator Dolliver called my attention recently to an instance as between Keokuk and Fort Dodge; and I think there is another instance that comes to my mind of discrimination that is claimed between Clinton and Davenport, with respect to shipments from St. Louis and shipments from Texas. Those are all that I have heard of, and those I have heard of only recently.

Senator NEWLANDS. Suppose in your State at every intersecting point of two rival railroads discriminating advantages in freights were given; would not the entire business and population of your State drift toward those points? Would there not be a tendency in that direction?

Mr. CUMMINS. That would be the tendency unquestionably, as has been shown elsewhere.

Senator NEWLANDS. And there is a similar tendency of course with regard to interstate commerce?

Mr. CUMMINS. I believe that to be so.

Senator NEWLANDS. Do you believe, therefore, that the great centers which are served by competing lines of railway are stimulated in their population and business by this discrimination to the disadvantage of the towns that have not the advantage of competitive lines?

Mr. CUMMINS. I think you state the case correctly.

Senator NEWLANDS. So from the standpoint of public policy, do you regard that as a healthy movement?

Mr. CUMMINS. No, sir.

Senator NEWLANDS. The concentration of population, business, and wealth in great cities?

Mr. CUMMINS. Not the stimulating movement. The natural movement to large cities may not be unhealthy, but I do not like the stimulated movement.

Senator NEWLANDS. Now, assuming that you have got to yield to this competition so far as transportation by river and water is concerned, that that is a natural advantage which can not be regulated or controlled, and that the railroads must accommodate themselves to it, that condition of things would not apply to stimulate the centers that have no water competition, but whose competition consists entirely of the rival railway systems, would it?

Mr. CUMMINS. No, sir.

Senator NEWLANDS. Then the reason that would exist for the allowance of a less charge for a long haul than for a short haul where there was water competition would entirely fail where there is competition by rival lines?

Mr. CUMMINS. That reason would fail.

Senator NEWLANDS. You spoke of the rate on the average throughout the country as being fairly remunerative to the railways because the net earnings yielded a revenue of from 5 to 6 per cent on valuations running all the way from eleven billion to fifteen billion dollars, and you assume from that that while you do not object to the gross revenues which all the railroads of the country have, I understand you to claim that the burden of the cost of transportation throughout the entire country is not fairly distributed as between communities and as between commodities. Is that your contention?

Mr. CUMMINS. Yes; I do not think the burden is enough greater than it should be to warrant interference, in view of the disparity between what I regard as the actual cost of value of railway property and the capitalization. I brought in those statistics in order to show that the railways were not likely to suffer any injury if a rate here and there were reduced. I do believe that the greatest difficulty and the greatest wrong is in the maladjustment of rates.

Senator NEWLANDS. Now, in the adjustment of these rates the regulating body would have to consider either the capitalization or the value of those roads, and the question of a fair return upon them, would it not?

Mr. CUMMINS. I think not; practically the Commission would preserve the existing revenue substantially.

Senator NEWLANDS. But assuming now that it preserves the existing revenue, and the tonnage should, as is claimed by some, double within the next seven years, that would mean that each ton would be carried 1 mile for very much less than now, if the existing revenue were preserved, so that limitation of revenue to the existing revenue would automatically bring about a gradual reduction in the rates of the country, would it not, with the increase of business?

Mr. CUMMINS. Oh, very greatly. I do not mean that the existing revenue should be preserved, because as the traffic rose the existing rate should be reduced, and I have no doubt they will be reduced, whether that is done by the Commission or the railway companies.

Senator NEWLANDS. In that view, then, is it not of importance, in considering this question of regulation now, to arrive at some valuation of these railroads that are engaged in interstate commerce, so that excessive capitalization may not take place in the future, based upon an increase of business or an increase of earnings?

Mr. CUMMINS. I have not been able to see any actual benefit in ascertaining the valuation of the present properties. I do believe, however, that in all future properties there ought to be a judicious limit upon the issuance of securities—that is, stocks and bonds.

Senator NEWLANDS. Stocks and bonds.

Mr. CUMMINS. I do not believe that a railroad company should be permitted to issue stock and bonds without the supervision of some tribunal, some officer of the Government.

Senator NEWLANDS. Very well, now. As to the past, do you think there has been overcapitalization of these railroads?

Mr. CUMMINS. I have no doubt of it.

Senator NEWLANDS. To what extent?

Mr. CUMMINS. Well, I believe that $40,000 a mile is the outside figure for the cost of railways of the United States.

Senator NEWLANDS. And that would make——

Mr. CUMMINS. And the capitalization is over $65,000 per mile.

Senator NEWLANDS. Forty thousand dollars a mile for a little over 200,000 miles would make a little over $8,000,000,000.

Mr. CUMMINS. Eight billion dollars.

Senator NEWLANDS. And $65,000 a mile upon a little over 200,000 miles would make about $13,000,000,000.

Mr. CUMMINS. Yes; $13,000,000,000.

Senator NEWLANDS. So that you think the overcapitalization has been about $5,000,000,000?

Mr. CUMMINS. Yes. Now, mark you, I am comparing the capitalization with the cost of the railways. I have not attempted to compare the capitalization with the value of the railways, provided the railways were entitled to what is known in common parlance as the "unearned increment." I do not believe that a railway company is entitled to that growth in the value of its property which is incident to private property, for its business is to transport its product at all times at a reasonable price that will give a fair return upon the capital invested; and if that is done from the beginning there can be no additions to the value of its property.

Senator NEWLANDS. But assuming that we have to recognize in the regulation of the future the overcapitalization of the past, which, as you say, may represent unearned increment, you would deem it wise to prevent that in the future, would you not?

Mr. CUMMINS. Yes; I think that it ought to be a part of the incorporation law of every State in the Union that its corporations should issue stocks and bonds only under the supervision of the Government.

Senator NEWLANDS. Do you mean under the supervision of the National Government, so far as interstate railways are concerned?

Mr. CUMMINS. There is no law of that kind now. The States have authority to put that restriction upon railway companies, because all the railway companies are organized either in one State or another, unless it be the Union Pacific and some of those Government roads.

Senator NEWLANDS. Now, if we could get an adjustment as to the future so as to prevent overcapitalization or the capitalization of unearned increment, you would be willing, in order to arrive at that adjustment, to accept the overcapitalization of the past?

Mr. CUMMINS. I would, for this reason: There is no way of returning to the original point. This stock is not in the hands of the men to whom it was originally issued. The bonds are not in the hands of the persons who originally bought them, and I have never seen any way except to recognize that fact.

Senator NEWLANDS. Do you not think that is the sentiment generally of those who are in favor of this movement—the regulating of interstate railways?

Mr. CUMMINS. I think so.

Senator NEWLANDS. Do you observe anything in the country approaching a confiscatory sentiment regarding them?

Mr. CUMMINS. Absolutely none. I never knew public sentiment to be so well disposed toward railways as it is at this moment.

Senator NEWLANDS. And you think the public would regard it as a fair compromise if as to the railroads we should recognize the overcapitalization of the past, provided we could by a national law, or otherwise, prevent any overcapitalization in the future?

Mr. CUMMINS. I do not know how many of the people have given their attention to that particular subject, but I am quite sure it would be satisfactory to the people.

Senator NEWLANDS. Now, as to the percentage that should be paid upon this capitalization, the capitalization of the past and the capitalization of the future, what do you think would be a fair percentage to allow?

Mr. CUMMINS. I think that, understanding and recognizing the uncertainty of revenue, and assuming that you have a basis, which I will not speak of now, I believe that a railway company should be permitted to earn at least 7 per cent as conditions are now. Assuming that 5 per cent, we will say, is a fair interest upon undoubted securities, I believe that in order to guard against the uncertainties of railway operation there should be the opportunity to earn 7 per cent.

Senator DOLLIVER. Do you mean an opportunity to distribute that as a dividend?

Mr. CUMMINS. To do anything they like with it.

Senator DOLLIVER. After paying interest?

Mr. CUMMINS. No; 7 per cent upon the basis, whatever it is. We are not considering either stocks or bonds.

Senator NEWLANDS. You will observe now that the entire capitalization of all these railroads is put at about $12,000,000,000, or, we will say, $13,000,000,000, which is the amount we got at. Now, one-half of that to-day is in bonds.

Mr. CUMMINS. Practically.

Senator NEWLANDS. Which yield only 4½ per cent interest. Now, would you simply allow the interest on those bonds and then allow 7 per cent upon the six and one-half billions of stock, or would you allow the 7 per cent upon the whole thirteen billions, which would give a larger dividend upon the stock?

Mr. CUMMINS. Assuming the bonds to be all placed and the interest to be fixed, the former alternative is the one—that is to say, I would deduct the 4½ per cent, or whatever interest the bonds bore, and then provide 7 per cent for the remainder.

Senator NEWLANDS. Seven per cent for the remainder, and you would regard any action of the regulating power then that should fix rates arbitrarily that would yield a less revenue than 7 per cent upon the capital stock, after paying the interest charge on the bonds as confiscatory, would you?

Mr. CUMMINS. No, sir.

Senator NEWLANDS. What action would you regard as confiscatory?

Mr. CUMMINS. But I would regard it as inadvisable.

Senator NEWLANDS. As inadvisable?

Mr. CUMMINS. If we had a completed system of railways, if the end had come, and all that remained was to operate the property we had, I would regard a *much* less per cent than 7 as a fair return

upon the investment; but we are in the midst of development. We must invite capital into these enterprises in the future. They are not as certain in their returns as fixed investments, and therefore we must give the investors an opportunity to make more than they can get out of their money by loaning it on mortgages or investments of that character. Therefore I would myself give this premium. But I would not regard a rate that would afford 5 per cent, or even 4 per cent, as confiscatory.

Senator NEWLANDS. How about 3 per cent?

Mr. CUMMINS. That is below the fair return; so much below it that I would look upon 3 per cent as a confiscatory rate.

Senator NEWLANDS. A confiscatory rate. Then the margin of play between a reasonable rate and a confiscatory rate would be the difference between 7 per cent and 3 per cent?

Mr. CUMMINS. I think they name the limits pretty accurately.

Senator NEWLANDS. Now, if we create this regulating power and they should exercise the power of fixing the rates in such a way as to yield only 3 per cent, they would be without remedy in the courts, would they not?

Mr. CUMMINS. Not as I understand the law, Senator.

Senator NEWLANDS. They could appeal to the courts only to protect them against a confiscatory rate, could they not?

Mr. CUMMINS. I think the law has gone a little beyond that.

Senator NEWLANDS. You think that the court would itself determine what was a reasonable rate or return and would declare a rate that fixed anything below that as confiscatory?

Mr. CUMMINS. That is the tendency of modern decisions.

Senator NEWLANDS. If we enter upon this thing, would it not be well to provide in our statutes that in exercising this power of regulation the Interstate Commerce Commission shall so adjust the rates as to yield a return of not more than 7 per cent and not less than a certain percentage lower than that? Would not that give greater security to railway investments, and would it not promote and stimulate railroad building? And is it not to the real interest of the people to make these railroad investments as secure as possible by the law itself?

Mr. CUMMINS. I would see no objection to that course if the Commission was expected to rearrange all the railroad rates of the country, and therefore to compare the effect of those rates with the income now being earned. I would see some difficulty in applying that idea to a case where some little particular rate was taken up and an application made to change it.

Senator NEWLANDS. You mean that it would be difficult to estimate the effect upon the entire income of the company?

Mr. CUMMINS. Almost impossible.

Senator NEWLANDS. Then how would it do if the gross revenue now received by each one of these companies is not regarded as unduly high, to provide in the exercise of this power that the Commission should have regard for the existing revenue, and should not so act as to diminish the existing revenue, thus leaving the reduction in rates and the readjustments to come about gradually through the largely increased business of the future?

Mr. CUMMINS. You are proposing some very interesting, and to

me rather new questions, Senator. I hesitate a little to express an opinion without having given them more thought than I have.

Senator NEWLANDS. Well, I would not, of course, urge you to give an opinion that is not deliberate.

Mr. CUMMINS. You are suggesting some fundamental things.

Senator NEWLANDS. Well, my own idea, Governor, is that in this matter I would absolutely insure the bona fide investors in railroads in this country that the property is secure, and that we can afford to validate a lot of the abuses of the past if we can get a clear way for the future.

Mr. CUMMINS. Do you mean for the Government to guarantee the payment of the interest?

Senator NEWLANDS. Oh, no; not at all.

Mr. CUMMINS. What do you mean by "insure?"

Senator NEWLANDS. I mean to say so far as we can insure the protection of the property rights of those investors.

Mr. CUMMINS. Well, I agree with you perfectly on that.

Senator NEWLANDS. I do not mean in the absolute sense of a guaranty. Now, Governor, you have observed that, under existing conditions, a great consolidation of railways has taken place. Do you regard that tendency as a beneficial one to the public or not?

Mr. CUMMINS. I think that the consolidation of railways up to the point where reasonable competition is eliminated is a good thing and has been a good thing for this country.

Senator NEWLANDS. Up to the point where unreasonable competition is eliminated?

Mr. CUMMINS. Up to the point where reasonable competition is eliminated. I would not like to see a consolidation that would eliminate all competition, but to express my idea, suppose we had five systems of railway throughout the United States and they all ran from the Atlantic to the Pacific and took in the territory between; I believe that would be a better condition than to have these railways terminate—one at Chicago, another at Omaha, another at Denver, and so on to San Francisco.

Senator NEWLANDS. So that you believe in this tendency toward consolidation within general lines, but you would not favor a consolidation of all these lines into one great company?

Mr. CUMMINS. No; whenever they are all consolidated into one great company, I think that great company will be the United States.

Senator NEWLANDS. You recognize the fact that if they were all consolidated in one great company this discrimination in favor of great commercial centers and intersecting points of railways would entirely disappear, do you not, except so far as there must be a difference adjusted possibly through the water competition?

Mr. CUMMINS. I think there would be much less motive for the discrimination than now exists, if all the railways were owned by one company, and therefore I take it for granted there would be less of it. There would still remain, however, the motive to so adjust the traffic that the utmost revenue could be derived from it.

Senator NEWLANDS. Oh, yes; but now recollect, if we, however, assume that we are going to control the gross revenue by first valuing these corporations or accepting their existing capitalization and compelling the capitalization of the future, and allowing only a fair re-

turn upon that capitalization, thus automatically forcing a reduction of rates in the future to increase business, such a system would do away with very much of the complaint of discrimination that now exists in the country, would it not?

Mr. CUMMINS. I think it would.

Senator NEWLANDS. Now, upon the question of Government ownership, assuming that we should conclude to organize a bureau of transportation in connection with the Post-Office Department, which is now engaged in transportation and which expends about $170,000,000 annually in transportation—about one-seventh of the entire operating expenses of all the railroads in the country; assuming that we should organize a division of that kind, and get a competent railway manager, such a man as Mr. Hill or Mr. Tuttle, and put him at the head of that division, and authorize the condemnation by the United States Government of the interests represented by the stockholders of these corporations, leaving the railroads subject to their bond issues, those to be adjusted later on by the issue of bonds at a lower rate, and assuming that we had to issue six billions of bonds in order to pay for the stock, and we should establish a fund into which all the receipts from the railways should go, and from which all the expenses of the railways should come, including the interest upon the existing bonds and the interest upon the new bonds, leaving the railroads with their entire service as at present organized, traffic managers and all, do you think there would be any great difficulty in handling that enterprise?

Mr. CUMMINS. Yes; I think there would be some.

Senator NEWLANDS. Under such a man as James J. Hill or Mr. Tuttle, and with the aid of all the traffic managers?

Mr. CUMMINS. I think it is competent to handle it, but I am afraid of it. We have not reached that point in the development of our political characters, as I look at it, that will make it safe for us to assume so vast an enterprise. Now, it is said that the post-office is under the civil service, and therefore is not partisan or political, but I know that the post-office is a very hotbed of political strategy and enterprise in every community. Just so I would think of the railways. They would increase enormously the number of Government employees, and, as I look at it, whenever that takes place, the "ins" will always be in, and the "outs" will always be out.

Senator NEWLANDS. Your principal objection, then, would be to the political control of this great machine?

Mr. CUMMINS. Oh, yes; that is my principal objection, because when you come to the matter of principle of course the Government can in one sense as well run a railway as it can a post-office or as a city can run waterworks or gas works.

Senator NEWLANDS. But as a mere matter of business, now, do you think that the Government could, under such an organization, conduct the business as well as it is now conducted?

Mr. CUMMINS. No.

Senator NEWLANDS. And with less complaint as to interference and discrimination and rebates?

Mr. CUMMINS. I think it could conduct it with possibly less local discrimination. I doubt very much whether it would, but I know from my point of view it would not conduct it with so much satisfaction to the people as it is now conducted.

ınator NEWLANDS. You think not?
r. CUMMINS. If I had my choice, to bear the ills we have or fly
hers that we know not of, but can conceive, I would bear the ills
ıave rather than Government ownership.
ınator NEWLANDS. You think the service, then, would not be as
factory to the people? Or is your objection to it based upon
inancial score, that the Government would run it at a very much
ar expense than it is at present run?
r. CUMMINS. My objection to it is, first, that it would be a vast
ical machine, of which I am afraid, and, second, because I have
tural tendency, I think, to go forward in governmental func-
s just as slowly as we can proceed, taking away individual enter-
s and the opportunities for individual profit only when abso-
y necessary.
ınator NEWLANDS. Now, as to the financial aspect of the thing,
ou realize that as to the six and one-half billions of bonds now
tanding, on which transportation pays an interest charge of
ıt $250,000,000, or 4½ per cent, that that could be gradually re-
d to about 3 per cent by the issue of Government bonds to take
place of present issues as they mature? You realize that, do you

r. CUMMINS. Yes; I do; and even less than 3 per cent.
ınator NEWLANDS. Even less than 3 per cent. Well, that would
e a difference of at least 1½ per cent per annum on six billions and
lf of bonds, or $100,000,000.
r. CUMMINS. Yes.
ınator NEWLANDS. That saving would be effected, would it not?
r. CUMMINS. That saving is to be put to the credit of Government
ership.
ınator NEWLANDS. Then, in addition to that, in the place of the six
ons and a half upon which you would be willing to allow an in-
st of 7 per cent, the Government could issue bonds for the pur-
e of that stock, which would bear interest at 3 per cent, could it

r. CUMMINS. Certainly.
ınator NEWLANDS. So that there would be a saving of 4 per cent,
ld there not, on that?
r. CUMMINS. Yes.
enator NEWLANDS. A saving of 4 per cent on six billions and a
f of bonds?
Ir. CUMMINS. Yes; $240,000,000 a year.
enator NEWLANDS. Two hundred and forty million dollars an-
lly, so that the total saving would be $340,000,000 annually,
ıld it not?
Ir. CUMMINS. Yes, sir; upon that hypothesis.
enator NEWLANDS. Then, upon that basis, within twenty years,
ıout allowing for the advantage gained by the gradual retire-
ıt of the bonds, that $340,000,000 saved annually would pay for
entire railroads of the country, would it not?
Ir. CUMMINS. It would if it were saved.
enator NEWLANDS. Yes; if it were saved. Now, your fear
ıld be that the cost of operation would increase?
Ir. CUMMINS. I think it would, some.

Senator NEWLANDS. There would be a saving in the item of taxes, would there not, because, as Government roads, they would not pay taxes?

Mr. CUMMINS. Well, segregating the railway property from other property, there would be a saving on that; but somebody would have to bear that burden just the same.

Senator NEWLANDS. That would be true. That can hardly be called an advantage. Now, you speak of politics as being an objection. Are not the railroads in politics now, in your judgment?

Mr. CUMMINS. I have discovered that occasionally.

Senator NEWLANDS. All over the country, do you not think so?

Mr. CUMMINS. Yes; I think they are in politics to the extent that they have certain interests which they believe ought to be protected, and they are very energetic and persistent in protecting them.

Senator NEWLANDS. In protecting their property rights?

Mr. CUMMINS. Yes.

Senator NEWLANDS. And that of course is the only purpose. We recognize that. Now, the action of the Government affects them in two ways—first, in the matter of taxation, and, second, in the matter of regulation.

Mr. CUMMINS. Yes.

Senator NEWLANDS. As it is now they have the taxing powers of 45 different States at work upon them, and the regulating powers of 45 different States, and it is now proposed to have the regulating power of the National Government. Between these various powers, you recognize the fact that if these powers are exercised arbitrarily or oppressively the property of the railroads can be destroyed, unless the courts protect them.

Mr. CUMMINS. I do.

Senator NEWLANDS. As long as that condition of things exists, do you think they are ever going to be out of politics?

Mr. CUMMINS. Never.

Senator NEWLANDS. Would it not be wise, then, for us upon this question of taxation, if it is a possible thing, to provide for such a mathematical adjustment of their taxes in the future, say, in the shape of a percentage tax upon gross receipts, as to absolutely exempt them from the action of these thousands of taxing officials and taxing bodies in this country if we could get the same results so far as their sustaining their proper proportion of the burdens of government is concerned?

Mr. CUMMINS. Do I understand you to employ the processes of the General Government to ascertain what each State should exact in the way of taxes from the railroads?

Senator NEWLANDS. I have not as yet outlined any particular method. I simply ask you whether, if it could be accomplished legally and constitutionally, it would not be well to substitute some system of mathematical adjustment of these taxes, so that they would know exactly what they were to pay and the States and the National Government would know exactly what they were to receive, assuming that those taxes would represent the fair proportion of their contribution to the expenses of government?

Mr. CUMMINS. The railways might welcome that kind of a measure. I do not believe that the various communities would agree to

it for the reason that the burden is so different in different States. Now, I think that it would be well for all interested if the value of each interested railroad could be ascertained by a given power, and I think it would be well if the portion of that value to be taxed by the several States could be ascertained by a central power. But when, for instance, you would ascertain the value of that part of the railroad property that we should tax in Iowa, and certify it to us, then we would want to tax it in our own way, and just to that extent that we found it necessary to sustain our own institutions.

Senator NEWLANDS. And that would keep the railroads in politics so far as taxation was concerned.

Mr. CUMMINS. No; it would entirely eliminate the railroads, so far as the State was concerned, from politics, but might still keep the railroads interested in national politics.

Senator NEWLANDS. But you would have this valuation made by some national body.

Mr. CUMMINS. In our State it is the duty of the executive council each year to value each one of our railroads for taxation. Take the Northwestern Railroad, for instance, having six or seven thousand miles of railway, 1,500 miles of it in Iowa. The difficulty of ascertaining what part of the entire value of that property is the value of the part in Iowa is almost insurmountable, and therefore I would be very glad to see a central power ascertain the entire value of the Northwestern Railroad property, and ascertain what part of the entire value should be taxed by Iowa, and then have it certified to us, and we would tax it just as we do all other kinds of property.

Senator NEWLANDS. Well, suppose it would be constitutional to impose a tax of 3 or 4 per cent upon the gross receipts of all these corporations engaged in interstate commerce, which would yield, say, a sum little in excess of the taxes now paid by the companies, and that we should in that law exempt these interstate railroads as national instrumentalities from all local taxation, but provide for the distribution of the tax collected amongst the States according to trackage or according to the volume of business furnished by each State, or according to some other fair rule, so that each State, without the expense of collection, would receive approximately what it gets now, would you not regard that as an improvement upon the present system, in so far as it would eliminate railroads from politics on the subject of taxation?

Mr. CUMMINS. On your hypothesis I would regard it as a very great improvement.

Senator NEWLANDS. Now, as it is, there is a very great variance in the laws of the States regarding taxation, is there not?

Mr. CUMMINS. There are no two of them alike.

Senator NEWLANDS. And there are different principles laid down for valuation of the railroad properties?

Mr. CUMMINS. That is true.

Senator NEWLANDS. Some valuing simply the tracks, others including the franchise; some insisting that you should take simply the value of the track and franchise, and others that you should estimate the value of the road by adding the value of the bonds and stock, and dividing that by the mileage, getting at the value in that way. Now, do you not recognize the fact that this complicated

system of taxation, bearing upon these railroads, and requiring constant vigilance from them, is a potent factor in keeping them in politics in this country?

Mr. CUMMINS. Unquestionably, and that has led to the adoption in many States, or in some States at least, of a tax on the gross earnings. Minnesota does that.

Senator NEWLANDS. Then do you think the question of the regulation of these railroads by the various States cuts much figure in keeping them in politics?

Mr. CUMMINS. I think so.

Senator NEWLANDS. You think so. You think as to the election of railway commissioners, etc., and of everybody whose official actions affect either their taxes or their rates, that they have a personal interest?

Mr. CUMMINS. I have observed that very often.

Senator NEWLANDS. Do you think that is a healthy tendency—that it tends to the healthful conduct of politics in this country?

Mr. CUMMINS. No.

Senator NEWLANDS. They are, of course, sometimes and frequently the object of blackmail attacks, are they not?

Mr. CUMMINS. I have known them to be.

Senator NEWLANDS. And at other times the object of violence and prejudice?

Mr. CUMMINS. Much less of that than formerly, but I suppose there is still some of it.

Senator NEWLANDS. But you feel, I presume, that there is the need of constant vigilance on the part of these railroads as to political conditions under the present state of affairs?

Mr. CUMMINS. I do not think there is need of it, but it exists.

Senator NEWLANDS. And you think that the fear of the investor as to unwise or violent or prejudicial political action on the part of the controllers of these railroads regarding their taxes and rates is the controlling element in their active participation in politics?

Mr. CUMMINS. Undoubtedly.

Senator NEWLANDS. Undoubtedly. Then, if we could eliminate the motives for that, would you not regard it as an advantage to the country?

Mr. CUMMINS. A very great advantage. If we could eliminate that motive and preserve the advantages, I would be very glad to see it done. It is only a question of balancing up the advantages.

Senator NEWLANDS. I would like to question you, Governor, upon this plan that I have suggested, but I am afraid it will take too long, and I would very much like it if you would read an article in the North American Review, an article prepared by myself upon this subject, and if you would, give us your views regarding it in a written communication later on.

Mr. CUMMINS. An article in the North American Review for April?

Senator NEWLANDS. Yes; and I will send it to you.

Mr. CUMMINS. I take the North American Review, but I have not read that particular article. I shall be very glad to do that, and if my views can be of the slightest benefit to the committee on those points I should be glad to communicate them.

Senator KEAN. A statement was made by Senator Newlands in regard to the amount of money paid by the Post-Office Department.

Senator NEWLANDS. It is $170,000,000 annually, is it not?

Senator KEAN. Do you mean the amount paid for railway transportation of the mails?

Senator NEWLANDS. Oh, no; I mean to say the whole expense.

Senator KEAN. The total of the last post-office appropriation bill I think is $185,000,000.

Senator DOLLIVER. Governor, have you anything further to say?

Mr. CUMMINS. Nothing except to express my thanks for the patient and courteous way in which the members of the committee have listened to my statements.

Senator DOLLIVER. On behalf of the committee I desire to express to you our thanks for coming here, and for your very entertaining statements.

ADDITIONAL STATEMENT OF MR. JOSEPH RAMSEY, JR.

Mr. RAMSEY. With the permission of the committee I should like to make one statement which I think Governor Cummins will gladly receive, for I want to set him right upon one thing. I do not think he would want to make a misstatement in the matter. I know he does not.

Mr. CUMMINS. I am sure I do not.

Mr. RAMSEY. The Governor said the railroads had injured the development of Iowa industrially.

Mr. CUMMINS. No; I did not say that. I said that was the result.

Mr. RAMSEY. I would like to call your attention to the return for 1900, as compared with 1890; the number of industrial establishments was doubled, or an increase of 99.2 per cent; increase in capital invested, 32.5 per cent; increase in the average number of wage-earners, 14.7 per cent; increase in total wages, 17.1 per cent; increase in value of products, 31.6 per cent. From 1898 to 1902 the percentage of increase in the number of people employed in industrial establishments was 26.8 per cent, and the total value of products—manufactured articles—for Iowa was $154,617,000 in 1900, showing that Iowa is a pretty good manufacturing State for one which has but one article of raw material, which is coal.

Mr. CUMMINS. Iowa is a very good State, but not half as good as it would be if we had a fairer show.

STATEMENT OF MR. JAMES F. PARKER.

Senator DOLLIVER. State your name, residence, and occupation.

Mr. PARKER. James F. Parker. My address is 203 Produce Exchange, New York City. I am chairman of the trade and transportation committee of the New York Produce Exchange.

Senator CLAPP. You may proceed with your statement.

Mr. PARKER. The crux of the question seems to be to determine to what extent the Government, through the medium of the Interstate Commerce Commission, should control the management and the operation of the railroads in respect to freight rates. Should the rate-making power be practically vested in the Commission, or are the present powers of supervision and regulation sufficient?

From the point of view of one engaged in the grain business for about thirty years in New York, and from experience as chairman of the committee on trade and transportation of the New York Produce Exchange, it is my own personal opinion and the opinion of my committee and a large number of representative members of the exchange which we represent that it would in principle be wrong to confer rate-making powers on this Commission. This opinion is expressed without reference to the personnel of the Commission, in whom we have great confidence, as is attested by submission to them, for an advisory opinion, our Atlantic seaboard differential dispute.

It is wrong in principle, because governmental interference and excessive regulation of corporate and individual enterprise is harmful to industrial and commercial progress. Rates of freight are the sales prices for the service the railroads render, and it would be just as legitimate for the Department of Commerce and Labor to take absolute control of the price schedules of all other corporations as to confer the power of making rates upon the Interstate Commerce Commission. The American public, I take it, is not prepared to submit to this method of confiscation of property rights. Instead of being free to use and employ expert, experienced men, trained from their youth, fitted by their practical education and experimental familiarity with the most intricate business problem of the day—the fixing of rates—they would have to submit to this vitally important part of their business being put under the management and control of men trained in entirely different channels, politically appointed, liable to be changed every few years, the little experience thus gained constantly giving place to inexperience, all of which, in my opinion, would be most unwise and unjust.

It has been asserted that it is not proposed to confer general rate-making powers upon the Commission, but only power to name the rate after investigation of specific complaints. This is a fallacious argument, for the reason that it would be feasible under one complaint, for instance, to fix the Chicago-New York grain rates and the grain differentials, which, being basic rates, would involve the rates on every shipment of grain to every destination east of Chicago. Besides, a fixed relation must exist between grain and grain products, and such proceedings would necessarily include fixing the rate on the entire movement of grain products. Again, the Commission has held, in cases before it, the right to pass upon the relation of rates between wheat and wheat flour. (See Int. Comm. Rept., 214.) It would therefore, to be consistent, fix the relation of rates between pig iron and manufactured iron and between all raw materials and the manufactured products thereof. This would inevitably be the outcome of giving the Commission power to fix rates.

It seems to me that the Interstate Commerce Commission's present powers are adequate. For instance, in its power to summon and examine persons, forcing them to testify under penalty of contempt of court, and in requiring the production of books and papers, they are invested with a power which exceeds the authority of the ordinary grand jury. In its power to avail of the Attorney-General's department, to institute proceedings in court, it has the power of a prosecuting attorney. Now it is proposed to give it authority to change an existing rate and substitute another in its place which *would practically* be conferring upon it legislative powers. And,

further, the powers of the court itself, as its decisions are to be binding upon the parties adjudged at fault. I do not, therefore, believe that the powers of the Commission can be extended in the proposed direction without violating the principles of justice.

Unless the Government is prepared to take entire ownership of the railroad systems of the United States, which would be a most deplorable experiment, it is as wrong in principle to interfere with their freedom of administration as it would be with individuals. They should be permitted to find their basis in the competition of the day, which from the very nature of things must govern the carriers so long as they are free to establish rates in the interest of territorial and industrial development and upon which, in my opinion, the continued expansion of our commercial interests are primarily dependent. Of course this is not denying that there should be some reasonable governmental supervision for the protection of the public and localities from the abuses of corporations, which have been granted franchises and the right of eminent domain, but it should not be such as to interfere in any way with the flexibility of rates in vogue under existing conditions.

The proposed radical amendments are not called for, and they would not correct the inequalities of railroad administration for which, in my opinion, the present law, with some slight amendments, would be fully adequate if properly enforced. It is therefore, in my opinion, not sound business to seriously disturb commercial conditions and the existing intricate, though necessary, method of making rates by substituting governmental rates which can not be flexible or made to conform to changed conditions of trade.

I do not presume to say that there are not discriminations, abuses, and inequalities of service which need correction, but I consider it a fair statement of fact that if the conditions of 1887, when the Commission was created, did not justify Congress in positively vesting the rate-making power in the Commission, the conditions, both in respect to discriminations and unreasonable rates, would not now justify conferring a power which, if mistakenly or wrongly used, could paralyze commerce and trade, and make or unmake cities.

While we are interested in reasonable rates, our business is more seriously affected by discrimination against us in favor of competing ports, and it is also essential to the welfare of our trade that there shall be no discrimination as between shippers. Our competition is between our own ports and foreign markets, and we in New York, for instance, are not as much interested in what the rate is as we are in the fact of being able to meet the competition of the Gulf and Canadian ports. I believe this to be largely true of commercial interests throughout the country. Manufacturers may be an exception, as a change in rates may affect their profit, but in the case of dealers in agricultural products the producer and consumer are usually the only ones benefited or harmed by changes in rates. What we require, is the absolute elimination of rebates to shippers and unjust discrimination of ports.

Railroad conditions have greatly improved since 1887, due largely to the work of the Commission (investigation, recommendation, and publicity) and the development of railroad administration in the direction of more effective regulation of competition, which had been unrestrained and reckless. A notable instance of this may be

found in the large and important ex-lake traffic. Some years ago, grain moved from the Lakes to the seaboard at as many different rates as there were roads, and in the same train load there could be found cars of like grain moving at different rates. In recent years the rates have been uniform, so that the question of discrimination between shippers has not been raised, and certainly no one could question the reasonableness of the rate of $30 per car of 1,000 bushels of corn from Buffalo to New York, including the lighterage to any point in the harbor limits. This is about 2 mills per ton per mile, less harbor delivery.

Now, I desire to present the practical side of the question from a merchant's standpoint. We do not believe that the proposed law can be made practicable; i. e., it can not be reduced to practical benefit to anybody. Its practical effect will be, first of all, to unsettle every grain merchant west and east who is at all dependent upon freight rates in the conduct of his business. Our business abroad depends upon supply and demand, interior and foreign markets, competition of other countries, railroad rates, and ocean rates.

Contemplate, for a moment, grain-trade transactions on the New York Produce Exchange any business day. There is constantly being posted telegraphic information of conditions of the crops and any items of news affecting prices. In the morning merchants have their private cable advices of the conditions from the United Kingdom and the continental markets. These quotations are publicly posted, also every change in prices in interior American markets. Merchants are endeavoring to fill orders for export, and, of course, must take into consideration all the factors. Rail and ocean rates are most important. Competition via Montreal, St. Johns, and Portland is keen, and when, day by day, we are unable to meet this competition, with ocean freights at the lowest possible rate, and we see the business in large commitments diverted elsewhere, our last resource is in a reduction of rail rates. We therefore appeal to the eastern traffic managers, presenting to them our situation, which always requires prompt relief. As the movement of grain is not uniform throughout the year, but is largely restricted to the season when the exportable surplus is disposed of, we are, therefore, out of the business during the period when the Canadian ports have an advantage in rates unless our rail connection promptly helps us to meet the competition. Now, assume that the Interstate Commerce Commission, having been empowered to make rates, has fixed the Chicago-New York rate and their decision has been confirmed by the proposed court of transportation; then, at the beginning of the corn movement the rates via competitive ports are cut, as has been the case in the past year; our whole surplus corn crop could be exported before we could secure relief through the medium of the Commission.

Further, it is physically impossible for a commission, unless furnished with an extraordinary number of assistants as familiar with railroad traffic as themselves, to give the necessary attention to the vast number of cases that would be brought before it. Therefore, smaller and insignificant claims, having priority of date of filing, would encumber the Commission, and important changes of rates, to which immediate action would be necessary, could not be considered in time to be of any value to the trade. Thus, it would work against

the interest of the larger commerce of the country. For instance, the export rate from the Missouri River to New Orleans, which competes with the eastern seaboard, is, say, 18 cents per 100 pounds on corn; to Chicago it would be 6 cents; transfer at Chicago, ½ cent; rate to Baltimore, 15 cents; total, 21½ cents—a difference of 3½ cents per 100 pounds; with this differential, the eastern seaboard got some share of the grain from the western interior. A Gulf road comes in and makes what is termed a "midnight" tariff of 13 cents to New Orleans. The eastern roads do not meet it—do not feel that they can afford to meet it. What is the remedy of the eastern seaboard? The various commercial bodies call a meeting of their trades and enter their individual protests. This is the first step. The next is to call a general meeting of the markets affected, to which the railroad traffic officials are invited. The whole question is thoroughly discussed, the eastern roads are impressed with the necessity of protecting their patrons, and at once join the western roads in an order to their managers to make any rate that is necessary to hold the share of traffic properly belonging to the East. This is done in a day.

Now, this is not a hypothetical case, but a chapter from our actual experience. Last February we found that Chicago was unable to meet New Orleans competition for corn in the territory west of the Missouri River, and, as Chicago is the point of accumulation and distribution for the seaboard markets, these markets were necessarily affected. Ocean freight engagements were being made from New Orleans at advancing rates, whilst our own ocean freights were stationary or declining.

Immediately the seaboard markets began to file their protests. Baltimore, Philadelphia, and New York sent vigorous protests to the central traffic committee at Chicago; this was followed by a call by the president of the New York Produce Exchange for a general meeting. This meeting was held in the Produce Exchange in New York. It was attended by delegates from Baltimore, Philadelphia, from the Chamber of Commerce, Merchants' Association, Cotton Exchange, Coffee Exchange, and the steamship interests of New York, by delegates from Buffalo, Detroit, Toledo, and Chicago. Milwaukee, Peoria, and St. Louis received their invitations too late to send their delegates. There were also present the president and third vice-president of the Erie Railway Company, the vice-president of the Delaware, Lackawanna and Western Railroad, the traffic managers of the New York Central, Pennsylvania, Lehigh Valley, and, I think, of the Baltimore and Ohio Railroad.

The loss of traffic and business to the East and the increased movement to New Orleans was discussed from every standpoint. The invasion of the Gulf roads was condemned, and before that meeting had adjourned every railroad official there pledged his company to meet the competition and protect the eastern markets.

Suppose the rate-making power is in the hands of a commission, what would be the remedy of the eastern merchants in this case? Their protests would be unavailing if the Commission had already fixed the rate, and if not, it would likely be unheeded by the roads, and justly so, if they could not meet the rate except at a loss, and the committees appointed by the various boards of trade would be referred to the Interstate Commerce Commission. By the time the Commission could take up a case of this importance and render a

decision all the damage would have been done. It is therefore not practicable. Besides, it would sin ply be impossible for them to impersonate the railroad managers and act in the same capacity. They could not possibly grasp the case in the moment that the railroad managers do. In other words, there is such a clear understanding of all that makes up such a condition between the merchant and the railroad traffic managers that they both instantly understand each other. It is similar to a case of dispute submitted by two members of an exchange to a board of arbitration composed of men who are conversant with all the details and customs of the business in which the dispute arises, as compared with the same case submitted to our courts.

Let me ask you to look at another aspect of the experience just cited. A merchant from one of the grain markets is found in Nebraska buying up corn in fairly large blocks, at prices 1 to 2 cents above what is obtainable in any other direction. In a few hours we are apprised of the fact, and we know that rates are already changed, or are going to be; we don't wait until we have some positive evidence of a prospective change; we don't care for that evidence, as that can be smothered so deep that years of the most vigilant investigation might not discover it; but we know from the prices paid for that corn that there is a screw loose in the business somewhere, and when we go to our railroad managers we know that when we put all our figures before them that they know that conditions are changing. They also know that *we* know that *they* know; we understand each other perfectly.

Another illustration of the present method of rate making and the adjustment of rates may be cited in relation to ex-lake grain. The "at and east of Buffalo" rate is naturally subject to changes on account of the opening and closing of navigation and other causes. Representations of the New York Produce Exchange committee on trade and transportation in readjustment of these rates have always been courteously received by the traffic officers of the New York road, and they have always been disposed to accord us fair treatment, appreciating that our interests are identical, with the result that we have always felt that our requests have been granted when possible and we are not, under the circumstances, yet ready to substitute this method for the governmental regulating process.

It was as recent as Monday of this week that we got information that about 700,000 bushels of corn was being booked from Chicago to Montreal. As chairman of the trade and transportation committee, I immediately notified the chairman of the grain committee of the New York roads and telephoned several of the traffic managers at the same time. A member of the transportation committee of the Philadelphia Exchange was working with the Pennsylvania Road. The result of this was that at a meeting of the managers, held on Tuesday, they granted the reduction in the rates from Buffalo that we had asked for. Again I say this would have been impossible if we had been dependent upon a commission.

The usefulness of the Commission would be greatly advanced by an amendment to the law providing for appeal from the United States circuit court to the Supreme Court and giving precedence to the hearing and to the decision of such appeals over all other cases except criminal cases, substantially as proposed in section 15 of the Esch-Townsend bill.

Make the law as rigid and the penalty for its infraction as heavy as possible. Give the Commission increased powers of investigation, if that is possible. Increase the number of its members so that its business can be facilitated by dividing it; also that all preliminary investigations can be conducted by one part of the Commission, whilst another part is engaged in considering testimony and deciding questions submitted, so that complaints can be disposed of more expeditiously. Increase the remuneration of the Commissioners to a sum that will always command the highest talent of the land. Add to the membership of the Commission irreproachable railway experts; make the tenure of office for life or removal upon charges only, and you will do the commercial interests of this country lasting good instead of incalculable harm in passing the Esch-Townsend bill now before you.

These amendments would, in my opinion, render the Commission an efficient body for the purpose for which it was created, protecting the shipper and not unjustly usurping the province of the railroads in operation of their own business.

The alarming financial effect, the resultant panic following such a change as the new bill contemplates, I dare not attempt to describe. The constitutional aspect of it I do not touch upon, preferring to leave these questions to financial and legal minds, presenting to you simply a merchant's view of what would be the practical working of the measure. I now append a resolution passed by the board of managers of the New York Produce Exchange, January 7, 1904:

Extract from minutes of the board of managers of the New York Produce Exchange, January 7, 1904.

The committee on trade and transportation reported the following resolutions:

Resolved, That it is the sense of this committee that the giving directly or indirectly of rate-making powers to the Interstate Commerce Commission is too great a power to confer upon a governmental commission.

Resolved, That we recommend to the board of managers that the exchange refuse to be identified with any movement to empower this Commission to fix rates.

Resolved, That a communication be sent to Mr. E. P. Bacon, chairman of the interstate-commerce law convention, calling his attention to the fact that the use of the name of the New York Produce Exchange as associated in this movement is unwarranted, and request him to erase the name of the exchange from the pamphlets issued in this movement.

On motion, the report was received, resolutions adopted, and recommendations therein contained ordered carried out.

I have authority from the board to use the above resolutions as expressive of its present views.

STATEMENT OF MR. H. M. HILL.

Senator CLAPP. Please state your name and residence.

Mr. HILL. H. M. Hill, Minneapolis.

Senator CLAPP. You may proceed this evening, if you desire to go on. If not, you can be heard to-morrow.

Mr. HILL. I think I should like to make my statement to-night.

Senator CLAPP. You may proceed.

Mr. HILL. Mr. Chairman, I approach this matter of rate making by statute only as one engaged for more than twenty-five years in merchandising. The history of the growth of that part of our coun-

try in which I live is the history of the railway. The history of rates for railway service is a constant reminder of the rapid filling up of as fertile a territory as is comprised in our country. The story of these rates is that of a constant strife, not as between individuals, but as between communities, for most of the period during which the interstate-commerce law has been operative the effort of the Northwest has been to obtain for itself revisions of existing rate adjustments to the end that the delivery of merchandise might bear to cost at other points a fair relation, thereby enabling the merchant to the better serve a constantly growing population and ever widening territory. To accomplish the schedules which are now effective from eastern and central territories to the gateways of the Northwest has been the work of years. The constantly growing needs were readily seen by the many railway geniuses of our territory, but the complex nature of rate making is of such a character that even with their assistance much time was lost in bringing about what is now perhaps as fair a schedule as with present conditions could be expected. This applies only to what are known as class rates. The making of commodity rates must of necessity be a matter of differing circumstances, season by season. It is my opinion that with the power to establish rates in the hands of a commission during the period referred to we would not now be enjoying the rates we have into Duluth, St. Paul, and Minneapolis, but that the influence of eastern cities would have maintained till now the differentials against us. This history of itself is evidence of the disposition and intention of railway managers to build up the territory in which they operate for the greatest good of the greatest number. I do not wish to infer we are altogether contented even now. Human nature is not such that you would expect it. I do believe, however, that wherever a grievance does exist we can the more easily adjust it with the railway manager than the Government officer. It is axiomatic that the owner of a business will do more for it, will slave to make it succeed, while the clerk or officer will but perform his duty as laid down for him. It is also true that a first-class shoemaker is not a good tailor, even if he does sit on a table.

It has taken a generation to develop the talent which is now employed in managing great railway properties and in making the rate adjustments for them. These men are scattered over the entire system of railways in our country, and in their thousands of offices are called upon day by day to make such adjustments as will permit given localities, industries, or products to compete with other sections. Is it fair to remark that no body which might be appointed by the Government could with the same interest act on such matters or could they be expected to proceed with as much impartiality as is the case to-day?

We believe we represent the sentiment of the jobbers of the Northwest when we say that the law as at present administered is sufficient to protect any and all shippers.

Senator CLAPP. Is that all you wish to say?

Mr. HILL. It is.

The CHAIRMAN. I have received a letter from Mr. A. B. Stickney, president of the Chicago Great Western Railway Company, explaining that he can not be present to address the committee on the ques-

tion under consideration, but asking that the following be inserted in the hearings as his statement, and if there be no objection it will be so inserted.

STATEMENT OF A. B. STICKNEY, PRESIDENT OF THE CHICAGO GREAT WESTERN RAILWAY COMPANY.

THE DEFECTS OF THE INTERSTATE-COMMERCE LAW.

Prior to the enactment of the interstate-commerce law the Government exercised no supervision over interstate railway rates. The Senate committee, which prepared and reported the bill, said "that this unrestricted policy had produced the lowest average rates known in the world, but that such rates had been attained at the cost of the most unwarranted discriminations in the collection of tolls, the effect of which had been to build up the strong at the expense of the weak, to give the large dealer an advantage over the small trader, and to throw the commerce of the country more and more into the hands of the few."

In explaining the bill when introduced to the Senate, the chairman of the committee said:

> The provisions of the bill are based upon the theory that the paramount evil chargeable against the operation of the transportation system of the United States, as now conducted, is unjust discrimination between persons, places, commodities, or particular description of traffic. The underlying purpose and aim of the measure is the prevention of these discriminations.

It is therefore evident that the prime purpose of the law was not to deplete the revenues of the companies by reducing the average rates, but to make the schedule of freight rates more equitable by reducing some rates which were too high, and increasing others which were too low, and by abolishing free passenger fares, and thereby preventing all kinds of unjust discriminations.

As all the purposes of the law relate to the schedule of rates, and as none of the purposes can be accomplished without a schedule, it seems evident that the most serious defect in the law is its failure to authorize the Commission to make a schedule of interstate rates.

A schedule of definite rates which the law should declare reasonable and just would be enforceable, because of certainty; while the words of the present law, that "all rates shall be reasonable and just, and that every unjust and unreasonable charge is prohibited and declared to be unlawful," are rhetorically grand words, but as enforceable legislation the language may be regarded as void for uncertainty.

The interstate law was not a hasty enactment. A very able committee of the Senate occupied more than a year in collecting facts and opinions of all classes of the public in all sections of the country, and the committee considered and discussed at considerable length the advisability of giving the Commission authority to make such a schedule of rates.

At that time there was an objection to such authority being vested in the committee, growing out of court decisions which have since been modified. When the question of the right of the legislature to fix railway rates first came before the courts, the Supreme Court of the United States took the extreme view that the legislature had the

authority to arbitrarily fix the rates which were valid, even though they were so low as to deprive the companies of all net revenue, adding the following:

We know that this is a power which may be abused, but that is no argument against its existence. For protection against abuses by legislatures the people must resort to the polls, not to the courts.

Under such construction of the law Congress might well hesitate to confer such an arbitrary power, involving interests of such magnitude, upon a commission.

As the decisions now stand, the same objection does not obtain. In the case of The Railway Company *v.* Minnesota (134 U. S. Report, 418), decided in 1889, the United States Supreme Court held that:

Neither the legislature, nor such commission acting under the authority of the legislature, can establish, arbitrarily and without regard to justice and right, a tariff of rates for such transportation, which is so unreasonable as to practically destroy the value of the property of the persons engaged in the carrying business on the one hand, nor so exorbitant as to be in utter disregard of the rights of the public for the use of such transportation.

In either of these classes of cases there is an ultimate remedy for the parties aggrieved, in the courts, for the relief against such oppressive legislation, and especially in the courts of the United States, where the tariff of rates established either by the legislature or by the Commission is such as to deprive a party of his property without due process of law.

But until the judiciary has been appealed to, to declare the regulations made, whether by the legislature or by the Commission, voidable for the reasons mentioned, the tariff of rates so fixed is the law of the land, and must be submitted to both by the carrier and the parties with whom he deals.

Following this concise statement of the law, the learned judge set forth the method of enforcement. He said:

That the proper, if not the only, mode of judicial relief against the tariff of rates established by the legislature or by its commission, is by a bill in chancery asserting its unreasonable character and its conflict with the Constitution of the United States, and asking a decree of court forbidding the corporation from exacting such fare as excessive, or establishing its right to collect the rates as being within the limits of a just compensation for the services rendered.

That until this is done, it is not competent for each individual having dealings with the carrying corporation, or for the corporation with regard to each individual who demands its services, to raise a contest in the courts over the questions which ought to be settled in this general and conclusive method.

The committee, in concluding not to authorize the Commission to make a schedule of rates, did not, however, seem to be influenced so much by the construction which the court had put upon the law as by an overpowering sense of "infinite labor and investigation" which it would impose upon a commission wanting in "exact knowledge" of the supposed mysteries of rate making to make a schedule of rates for all the railways of the country. These are the principal objections which are raised at this time against conferring such authority upon the Commission.

In considering this matter, it should be understood that the Commission would not make a separate schedule for each railway. The practice of each company making its own schedule is the chief cause of the present confusion in interstate rates, because there are as many opinions upon the details of a schedule as there are men engaged in making schedules.

Now, the Commission, having authority to make all the rates, would have no such difficulties. The Commission would not make rates for *each* railway, but only one schedule for all the railways.

The difference in the cost of carriage between long lines and short lines, between roads of high grades and roads of low grades, which is made so much of in opposition to such a schedule of rates, does not enter into the schedule question, whether made by individual railways, by association of railways, or by a commission.

There is no sentiment in business. The only condition upon which a long line or a line of high grades can get competitive traffic to haul is that it will haul it at as low a rate as the short line or the line of lower grades. The disadvantages pertaining to the long lines and to lines of high grades must be borne by the proprietors of such lines, and it is beyond the power of legislation and beyond the power of the schedules of rates, whether made by commissioners or by expert traffic officials, to prevent it.

The evident advantage of only one schedule to be consulted by shippers and traffic officials in order to ascertain any desired rate, instead of having to consult the thousands of separate schedules which now exist, would be one of the greatest benefits which it is possible for any legislation to confer either upon the companies or the public.

As to the matter of investigations, I do not hesitate to say that the committee was wrong in concluding that it would require "infinite investigation" before the Commission would be able to produce such a schedule of rates. All the factors—the tonnage available for transportation in the different sections and along different zones of transportation, and the rates which must be applied to such tonnage—has already been ascertained by the experience of years, and is fairly represented, as a whole, by the present schedules of the companies. The practical duties of the Commission in this regard would be to line up the existing rates to the best of its ability, reducing those that seemed too high, and making compensation for such reductions by increasing those which seemed too low. In these duties they would be assisted by the arguments of the traffic officials of the companies, and by the arguments of the shippers, and the Commission would be the arbitrators.

It is not to be supposed that in this way, or in any other way, a schedule would be produced which would be entirely satisfactory to everybody. Infinite Wisdom sitting as arbitrator could not accomplish such a task. But as infinite wisdom has not been vouchsafed to humans, the principle of human arbitration has been regarded as a fair way to settle conflicting business interests. The companies have over and over again attempted to introduce arbitration in the settlement of their disputes as to rates. The commission representing the sovereignty, with power to enforce its decisions, would be the most disinterested, and at the same time satisfactory, arbitrator which is possible.

Now, as I have said before, it is not to be expected that such a commission would produce a perfect schedule, but if the errors in the schedule were practically inconsequential, it would be the duty of all parties to submit. If, on the other hand, the mistakes were so large as to be of sufficient importance to justify an appeal to the courts, the Constitution and laws of the United States give three successive opportunities to have the mistakes reviewed by the courts—first, by the United States district court, then by the United States circuit court of appeals, and finally by the United States Supreme Court.

In the case before cited the United States Supreme Court says that in case the rates made by such a commission are so unreasonably low as to practically destroy property on the one hand or so exorbitant as to be in disregard of the rights of the public on the other hand, there is an ultimate remedy for the parties aggrieved in the courts for the relief against such oppressive rates, by a bill in chancery asserting their unreasonable character and their conflict with the Constitution of the United States, and asking a decree forbidding such rates. Therefore the rights of the public and the rights of the companies in regard to the rates which would be made by such a commission are as perfectly safeguarded as it is humanly possible to safeguard such rights.

I also take issue with the committee's conclusions about the requirements of exact knowledge in making such a schedule. This is also a point which is strenuously urged against conferring the rate-making authority upon the Commission at this time. The assumption seems to be that there are only a few men who possess the exact knowledge required, and presumably, owing to the relation of the supply to the demand, such exact knowledge can only be obtained by paying extraordinary salaries, far in excess of the salaries which Congress would be willing to provide.

When I was a boy we used to frame barns by "scribe rule," which was no rule, but just hard work. It consisted in placing, with great labor, the huge oak timbers, roughly and unevenly hewn, in their relative positions on the ground and scribing their proper lengths, and, by repeated fittings, making each particular tenon fit a particular mortised hole.

A few years later we learned to frame barns by "square rule," which consisted in reducing, at small expense, each coordinate member to the same size at the points of connection with other members, which enabled the length of all the members to be determined by measurements, and all the tenons and mortised holes were made of the same size, which reduced the labor of framing barns to the minimum.

Now, the amount of high-priced skill required in the mysteries of rate-making depends upon whether the rates are made by "scribe rule" or by "square rule." If made by "scribe rule" it requires high-priced skill to make the tenon fit the holes. The intense competition which surrounds company or association rate making compels these high-priced traffic directors to make schedules by scribe rule.

But, as a matter of fact, it is but a small part of the occupation of such traffic directors to scribe together schedules of rates. Scribing schedules is an occupation for clerks, not for traffic directors. I but quote the language of a high authority when I say that prior to the injunctions of the courts against paying rebates "it was understood among business men that schedules were made for the small shippers and those unsophisticated enough to pay the established rates." All the large shippers of freight had their high-salaried traffic directors as well as the railways, and the rates which such shippers paid were not determined by the schedules, but by bargaining between the high-salaried traffic directors of the shippers and the high-salaried traffic directors of the company.

Since the injunctions the exact knowledge of the traffic directors

has been exerted in the extremely difficult problem of how to pay rebates without paying "rebates." Nothing short of exact knowledge can do it. Hence, since the injunctions the traffic directors have stopped paying rebates on grain shipments, but in lieu thereof have paid elevator fees, a practice which the Interstate Commission has sanctioned as admissible under the law, notwithstanding it is evidently a rebate paid to elevator owners which is not available to ordinary shippers. The traffic directors have made secret contracts with the traffic directors of large shippers at rates below the schedule rates, and having thus secured the tonnage in advance they "publish" a schedule containing the contract rates. In the parlance of the profession, such schedules are called "midnight schedules," and have all the effects of secret rebates.

No small dealer can secure the advantages of a midnight schedule, because he does not control a sufficient volume of tonnage to induce the making of such a schedule. The small dealer must pay the regular schedule rates, but it is not so with the large dealer. The large dealer, say, in grain, agrees with the traffic director of a railway that he will buy in competitive territory a million bushels, guaranteed, and if possible, before the game is discovered, four or five million bushels, provided that after he has secured the grain the railway company will publish a legal schedule reducing the rate, say, 1 cent per bushel. With the advantage of this secret understanding the large dealer forces the small dealers out of the market by offering a fraction of a cent more than grain is worth, or induces some of the small dealers to contract to deliver the amount he requires.

Having thus secured the grain, the "midnight schedule" is published and filed with the Interstate Commission. The rate goes down 1 cent, and consequently the price of grain advances 1 cent. The result of the transaction is that the small dealers are driven out of the market or that the small dealers who have made contracts are saddled with losses which the large dealer pockets as profits, and the railway company secures a large tonnage of competitive traffic.

It is a slick way of turning small dealers' losses into large dealers' profits, but as the law now stands the lawyers agree that it is lawful.

These legal midnight schedules, which are of frequent occurrence and result in greater injustice than secret rebates, illustrate a defect of the law which will exist as long as the law permits railway companies to make the schedule of rates. They can only be prevented by conferring upon a Government commission the sole power to make such schedules.

A Government commission in making rates would be untrammeled by competition or a desire to secure tonnage for any particular line, and would therefore be able to frame its schedule by square rule instead of scribe rule. That it does not require high-priced exact knowledge to make a schedule of square-rule rates is conclusively proven by the fact that fourteen years ago the railway commission of Iowa, consisting of unskilled men, each drawing a salary of about $3,000 per annum, in a few months' time, mostly occupied in hearing the protest of the railway companies, made a square-rule schedule of rates in Iowa, and in the same year the commissioners of Illinois, like unskilled men, made a square-rule schedule of State rates for Illinois, both of which schedules have been used during all these years practically without change.

Here is an example of practically one schedule of rates made by State commissioners, covering two great States, having more junction and competitive points than any other equal area in the world, which has been satisfactory, without change, for more than fourteen consecutive years. While, on the other hand, the interstate schedules, made by traffic experts, under the stress of competition and a desire on the part of each to get some advantage over the other, which affected the interstate traffic of the same two States, have been changed, during the same time, by filing with the Interstate Commission probably not less than eight to ten thousand schedules.

The superiority of the commissioners' schedules is not alone in the matter of stability. The schedules made by the commissioners are in such form that a man of ordinary understanding, by inspection of the schedules, can determine for himself any rate he may desire; on the other hand, the interstate schedules made by the traffic officials are in such form and confusion that no ordinary man can, by inspection, ascertain any rate. At a hearing before the Interstate Commission but a few years after the passage of the law, the highest traffic official of a great corporation produced the interstate schedules which he said were in force on his railway. Being asked by the Commission if by inspection of his schedules he could ascertain for himself any desired rate, he answered under oath that he could not; that he had a schedule clerk who did nothing else, and when he wanted a rate he was obliged to apply to his clerk.

Based on the experience of Iowa and Illinois, it would seem proven that the making of a schedule of rates is a task which a commission can satisfactorily accomplish.

But the bulwark of the opposition to commissioners' rates is the varying conditions of trade which, it is claimed, necessitate constantly fluctuating rates.

"Varying circumstances and conditions" is the last ditch in the traffic director's argument. When defeated at every other point of the argument, with uplifted hand and with an air of mystery, he repeats in rapid succession the ominous words "varying circumstances and conditions" with most wonderful effect upon the minds of his hearers.

That circumstances and conditions, in respect to railway rates, have fluctuated rapidly in the past, no one can deny. Every time a cut rate is made; every time a midnight schedule is published; and every time rates are restored and midnight schedules are canceled, circumstances and conditions of trade change to such an extent as to materially affect all the various industries of the country. But these are varying conditions and circumstances of the companies' own making, which every merchant, manufacturer, and shipper is constantly protesting against as disadvantageous to his business.

Commerce demands stability. As long as railway rates go up and down no merchant or manufacturer feels safe in buying large quantities of staple merchandise, to the cost of which the rate of transportation contributes a large percentage, through fear that later his competitor will be able to ship at greatly reduced rates, and thus be able to undersell him. No contractor dares venture to make a contract involving large shipments until he has contracted with the railway companies as to his rates, and every department of trade, to a greater or less extent, faces the same perils.

Every student of the natural laws of prices knows that the relation of supply to demand, which must ultimately control prices, does not work its inevitable results instantaneously, but is only effective in the long run. Hence, it would seem safe to conclude that there are no natural circumstances and conditions pertaining to trade which demand that schedule making should be so elastic as to be inconsistent with due consideration by a commission.

Up to this point, it will be noticed, I have been speaking of a schedule of rates, but the legislation which is proposed by the present Congress, as I understand it, does not authorize the Commission to make a schedule of rates, but only to hear complaints, and, after a hearing, to fix the particular rate which has been the subject of the complaint. Such a law would impose a much more laborious, and, in many respects, a much more difficult, task than the making of a complete schedule, because there is absolutely no criterion by which to judge the reasonableness of any individual rate, except in connection with the whole schedule. Under the law, as it now exists, the Commission finds an individual rate reasonable or unreasonable by comparing it with some other rate, without considering whether the rate with which they compare it is reasonable. Hearings of this kind frequently compel the attendance of fifteen or twenty attorneys and high-salaried traffic officials for several days, and as there is nothing at the end of it but an opinion, and no money involved, the companies are willing to get through as quickly as possible.

But with a large amount of revenue at stake it would be different. At every hearing the companies would insist upon inquiring as to the reasonableness of the rate with which comparison was made, and so on, until the relative reasonableness of every rate in the schedule had been determined, and then the Commission would be compelled to pass upon the reasonableness of the schedule as a whole, because it is the aggregate amount of revenue which the whole schedule will produce, which is equivalent to a quantum meruit for services performed, which the companies are entitled to receive.

If rates are to be passed upon thus in detail, it is easy to see that an inquiry as to a few rates would consume a year of the Commission's time. And if appeals are made to the courts this method of making rates would entail a large number of court cases. But if, on the other hand, all rates should be established at one time, in one comprehensive schedule embracing all the rates, objections on behalf of the companies or the people can be adjudicated in that comprehensive manner pointed out by the court in the case already cited, in which Mr. Justice Miller says:

> The proper, if not the only, mode of judicial relief against a tariff of rates established by a legislative commission is by a bill in chancery, asserting its unreasonable character, and until that is done it is not competent for each individual having dealings with the carrying corporations, or for the corporations with regard to each individual who demands its services, to raise a contest in the courts over questions which ought to be settled in this general and conclusive method.

It would seem, therefore, unwise to restrict the authority of the Commission to fixing only such individual rates as have been made the subject of a complaint.

A consideration of rate making by the Commission would not be complete without considering the kind of rates which the Commission

should be authorized to make. Shall they be actual rates or only maximum rates?

If maximum rates, leaving the company free to make lower rates in its discretion, the whole purpose of preventing discriminations will be defeated, because the same overmasterful influences which have produced rate cutting in the past will induce one company to reduce one rate, another company to reduce another rate, and by this process in a short time the interstate schedules would be in as hopeless a state of confusion as they have been in the past.

Besides the utter uselessness of maximum rates in preventing discriminations, the enactment of a maximum-rate law would do violence to the fundamental principles of law, upon which the Government must rest its right to make any railway rates. The fundamental principles of law, which justify the Government in prescribing railway rates, and without which such action by the Government can not be justified, is that railways are public highways, which it is the prerogative and duty of the Government to provide and control. That this prerogative and duty is an integral part of the sovereignty of the State, which can not be separated or divested from the State. That railway companies in building and operating railways are performing a function of sovereignty under a license, or, using the language of some of the court decisions, "as the agent of the State." That the amount of revenue as a whole, and in detail, which they may collect depends not upon the common-law doctrine of quantum meruit, not upon a contract expressed or implied between the shippers and the companies, but solely upon the contract expressed or implied between the State and the companies. That the revenues collected by the companies are not in the nature of a quantum meruit for specific services performed, but are tolls or taxes levied by the State, and in the collection thereof the companies act as the agents of the State under its control.

Now, if I have correctly stated the fundamental principles, it necessarily follows that the making of a schedule of railway rates is the levying of taxes by the sovereignty, just the same as the making of a schedule of duties on imports is the levying of taxes by the sovereignty. And it further follows that it would be just as monstrous a perversion of the duties of sovereignty, which would result in equal injustices, to levy maximum railway rates and allow the railway companies which collect such rates a discretion to make lower rates as it would be to levy maximum import duties and allow custom-house collectors the discretion to make lower rates.

I take it that my conclusions can not be denied or doubted if railway rates are taxes. Hence, I will proceed to establish the proposition that railway rates are taxes.

The principle that railway rates are not the quantum meruit which common carriers are entitled to collect under the common law was established by the decisions of the courts and well understood by former generations of railway lawyers and managers. There is a long line of court decisions supporting this doctrine, which is also supported by sound reasoning.

One of the decisions says:

If a consignor ships goods by ordinary carrier, who used the common highways in common with all the king's subjects, having no superior rights, with-

out expressly agreeing to pay any specified sum for such services, the carrier may nevertheless collect what his services are reasonably worth, because there is an implied promise to pay a *quantum meruit* therefor; *but there is no such implied promise* between the shipper by railway and the railway company; the right of the company to recover for such services rests not upon the law of contract, expressed or implied, *but upon the license of the State to collect tolls.*

Another court has said:

The title of a railway company to its rights to demand compensation for its services is not derived to it upon common-law principles, and it is not to be measured by the rules of the common law; and whether it may lawfully demand compensation from a person who uses its highway for the carriage of goods, in the only way it can be used, depends upon the language of its charter and not upon the rules of the common law; and if its charter confers the right to collect tolls it can collect them. Otherwise it is impossible to see upon what principle it can be contended that it is not compellable to permit the public to use it without paying tolls.

These and other court decisions having established the doctrine that railway rates were not based upon the common-law quantum meruit, but upon the authority of the State to levy tolls or taxes, and as all railway companies at that time had been chartered by the States instead of the National Government, and as States could not levy taxes on interstate commerce, it became necessary for Congress to authorize the collection of such tolls or taxes upon interstate commerce.

An act of Congress, approved June 15, 1866, granted such authority. It authorized "every railroad company in the United States to carry over and upon its railroad passengers and freight on their way from any State to any other State, and to receive compensation therefor, and to connect with roads of other States, so as to form continuous lines of transportation of the same to the place of destination."

I therefore claim that the decisions of the courts and the action of Congress establish my premises as a legal proposition.

Next let us consider the reasonableness of the doctrine established by the court.

If we inspect the schedules of rates which have heretofore been enforced we will find that not one of them has been constructed on the basis that each rate should be a quantum meruit for the specific service to which it is attached. And if we examine into the services which are performed by the companies we shall find that it would be impossible for the companies to collect sufficient revenue upon the basis of such quantum meruit.

An inspection of such schedules discloses that the companies collect for carrying a ton of some commodities any given distance ten times as much as they collect for carrying a ton of some other commodities the same distance at the same time and on the same train; that when a railway company collects an average rate of 8 mills per ton per mile for all its traffic, it carries some commodities as low as 3 mills per ton per mile, while it collects upon other commodities 3 cents per ton per mile. Without taking time to name more than one specific example, I mention the rates on coal and coal screenings. The cost of carriage of coal and coal screenings is evidently the same, but the rate collected on coal screenings is usually about one-half the rate collected on coal.

It is evidently an impossibility to regard each and all of these various rates as a quantum meruit for each specific service performed. If the rate on coal screenings is a quantum meruit, the rate on coal, which is twice as much, can not possibly be a quantum meruit.

The reason for these varying rates is inherent to railway transportation. The cost, in the nature of things, is divided into two parts—a very large percentage of the cost may be called the fixed part, because it increases or decreases but slightly, if at all, as the volume of the traffic increases or decreases. A small percentage, consisting largely of wages of trainmen and fuel for locomotives, may be called the additional cost, which increases or decreases as the volume of the traffic increases or decreases.

The commodities which are transported naturally divide into three classes, with reference to the rate which can be collected without preventing or unduly curtailing the volume of movement.

First. There is a large tonnage of the essentials of life, like coal and grain, which can be moved long distances at low rates, which will pay the company the additional cost and a small amount toward the fixed cost, but which if charged a full proportion of the fixed cost would not move. But some of these commodities will move at higher rates than others. All of these commodities must evidently be carried at less than a quantum meruit.

Second. There is a large tonnage which can be moved at a rate which will pay both the additional cost and a full proportion of the fixed cost.

Third. There is a much smaller tonnage of luxuries, which move in small lots and which will move at a rate which will pay the additional cost and some more than a fair proportion of the fixed cost.

By carrying all three classes at the varying rates named in the schedule of rates the companies collect an average rate and an aggregate revenue which is equal to a quantum meruit for the aggregate services performed.

And, to cut a long story short, it is demonstrable that a schedule of railway rates constructed on the basis that each rate should be a full quantum meruit for the specific service would prevent the transportation of all the grain, cotton, lumber, coal, and all the great staples of production for long distances. It would destroy cities and cripple all kinds of productive industries and reduce the tonnage transported to such an extent as to ruin the railway companies.

Having pointed out the impossiblity which exists in the nature of the business, of making a schedule of rates, measuring each rate by the cost of carriage, and making each rate a quantum meruit, I ask indulgence while stating the reasonableness of a schedule on the basis of the recognized rules of indirect taxation by citing the analogies between the methods of making a schedule of import duties and a schedule of railway rates.

In making a schedule of rates to be collected as duties on imports, the aggregate amount required to be collected having been determined, the schedule maker takes the list of commodities which are imported and distributes the gross amount to the different articles. In making the distribution he must take into consideration how large a rate each article will bear, well knowing that if he assigns a larger rate to any commodity than it will bear it will produce no revenue, *because there* will be no importation.

Having thus ascertained the largest rate which each commodity will stand, without stopping or unduly checking importation, he applies such rates to the quantities imported to determine the aggregate amount which the largest rates will produce. If the aggregate is more than is required to be collected, he sets himself to work to reduce the rates. In making such reductions it is not necessary to make a horizontal reduction of all the rates. He may consider public policy. He may charge articles of luxury all they will bear and reduce the rates on articles of necessity by that much more.

A schedule of railway rates must be constructed in the same manner. The schedule maker must take the list of all the commodities transported and determine the highest rate which each commodity will stand without preventing or unduly curtailing their movement. Having done this, he must apply the rates thus obtained to the quantities and ascertain the aggregate revenue which such rates will produce. If such aggregate is more than is required, the rates may be reduced in the manner pointed out in reducing import duties, taking into consideration the same questions of public policy.

As a matter of fact, this is the way schedules of railway rates have always been made, and this, in effect, is the way the Government schedule maker will have to make them. And if a commission of Congress ever undertakes to make a schedule of interstate rates it will find that it will not be possible to substantially change the existing schedules without playing havoc with the whole economic system of the country. This is a country of vast area. The staple products—grain, live stock, cotton, coal, iron, etc.—must be hauled short distances, medium distances, and long distances. For short distances they will move at a rate equal to a full quantum meruit; for medium distances some will move at a rate equal to a full quantum meruit and some will not; for long distances none of them can move at a rate equal to a full quantum meruit. These are conditions which pertain to the nature of things. They are beyond the power of legislation to change. And the only change in the schedules which it is within the power of a legislative commission to make is to line up the rates and chip off some of the excrescences.

The only other defect of the law which I have time to consider is the inadequacy of the machinery which it provides for enforcing its provisions against discriminations. It might seem that Congress, having provided the law, the companies and the public ought to be expected to set the machinery of the courts in motion to enforce it. It might seem that the self-interest of the companies would prevent their accepting less than the legal rate. But in competitive traffic it is always for the self-interest of the companies to accept a less rate than their competitors, if thereby they can attract a part of their competitors' tonnage. Hence self-interest of the companies will not protect the integrity of the legal rates.

It might seem that the self-interest of the individual would induce him to put the law in motion for his own protection. The futility of expectations that individuals can protect themselves will be apparent by two illustrations, the first relating to small affairs, and the second to larger affairs.

In 1871 the State of Minnesota enacted its first rate law, which made rates lower than the rates of the companies. The companies ignored the law and continued to demand their own rates. One man

only in the whole State invoked the law. He received a consignment of goods, tendered the company the rate established by law, and demanded the goods. The railway company refusing to deliver them, he commenced an action in replevin. The action was commenced in June, 1871; in October the case was decided in the district court; in October, 1872, it was decided in the State supreme court; in October, 1876, just five years after the first trial, it was decided in his favor by the Supreme Court of the United States. The amount involved was 43 cents.

When we consider that the whole vast revenues of railway companies are collected in petty amounts varying from 25 cents to practically $50 or $60, rarely more than $100, it will be readily seen that no one individual would ever be likely to have enough at stake to justify a contest with a railway company.

As to the individual of larger affairs taking up the discriminations which are ruining his business in that larger and more general way suggested by Mr. Justice Miller, by a bill in chancery, an incident has recently come under my own observation which illustrates the impossibility of the individual thus invoking the law in protection of his rights.

In this case the bill in chancery had been prepared, and the plaintiff came to his attorney's office to sign. He sat down at the table, took the pen in his hand, and hesitated, then threw down the pen without signing. He said, in effect: "I dare not do it. The savings of my life are invested in grain elevators, stock and coal yards on that company's station grounds under leases terminable at the company's pleasure. If the company did not cancel the leases, which they probably would not, it will be so difficult for me to get cars that my business will be ruined, and the value of my property will be destroyed."

Fifteen years' experience makes it evident that neither the companies nor the individuals will set the machinery of the courts in motion to enforce this law, and that the fear of the extraordinary penalties of the law will not enforce it. Hence, if the law is to be enforced, it must be enforced by the Government.

A proper consideration of the machinery which would be required to make Government enforcement effective demands that the task should be fully comprehended.

As the courts have decided, the Government, under its contract with the companies, is levying indirect taxes upon all the interstate traffic which is transported.

By the enactment of the interstate-commerce law the Government, in effect, undertakes to supervise the collection of such taxes in their integrity, so that there shall be no unjust discriminations in their collections, either by underbilling in respect to weight, or by wrong classification, or by secret or public rebates, or by any ingenious devices.

The aggregate annual revenue is more than $1,700,000,000, or more than three times the total revenue of the National Government, and this vast revenue is collected at more than 50,000 stations in items ranging from 25 cents to $50, with comparatively few items exceeding $50. The simple statement of the proposition is convincing that the labor of enforcing the law is altogether beyond the physical

ability of a Commission composed of five members, with an annual appropriation of, say, $100,000.

The mind can not grasp the necessities of such a gigantic proposal except by comparison with something similar with which the mind is more or less familiar. In the collection of its own revenues the Government has substantially the same kind of a task, but much easier of accomplishment, because the aggregate is smaller, the number of stations at which collections are made are fewer, and the items collected average much larger.

The supervision of the collection of the national revenues is not delegated to a legislative commission, occupying chambers over a printing shop on F street, but it is intrusted to one of the great Executive Departments of the Government, occupying the grandest and most conspicuous of the Government buildings in Washington, with a Secretary, who possesses the dignity pertaining to a membership of the President's Cabinet of legal advisers.

To assist in supervising the national revenues, to prevent unjust discriminations, either by undervaluation or by wrong classification, or by unlawful drawbacks, the Secretary of the Treasury employs expert accountants who check each item of the collections, and inspectors, detectives, and attorneys to detect and punish all kinds of frauds.

Such is the machinery which has been found necessary to supervise the collection of the national revenue. Is it reasonable to expect that the supervision of the much larger revenues of the railways can be accomplished with less?

On the contrary, it seems clear that before the Government can expect to accomplish the enforcement of the interstate-commerce law the duty of enforcing the law, which is an executive, not a legislative, function, should be delegated either to one of the existing Executive Departments or to a newly created Executive Department, which should have the authority to appoint expert accountants, with powers and duties similar to national-bank examiners, who should from time to time and for such length of time as might be necessary check each item collected and each item of expenditure by each railway; to appoint inspectors, who should supervise the weights and classification, and detectives and attorneys to detect and punish. It would be necessary to check the items of expenditures to prevent payment of rebates, either as rebates or as other ingenious devices.

The public examiner, an executive officer of Minnesota, is authorized to thus check railway accounts, and at his first checking he discovered the details of all the rebates which had been paid out, and obtained payment of the gross-earnings taxes to the State.

The machinery which has been described would be reasonably certain to detect and expose violations of the law, and if followed up with energy on the part of the Government would reduce violations to a minimum at least.

As the law now stands, the whole responsibility of enforcing the law rests, with a multitude of other duties, upon the Interstate Commerce Commission, with a ridiculously small annual appropriation for expenses. The experience of fifteen years has proven this machinery to be inadequate.

Just a word about the Interstate Commerce Commission. It would seem that if Congress gives it the authority to make the schedule of rates, *and, more especially,* if it confers the power to fix, after

a hearing, a rate which has been complained of, its time will be fully occupied, and that it ought to be relieved of all other duties. Besides, the making of rates is the enactment of laws; it is a legislative function. The enforcement of laws is an executive function. It is inconsistent with American ideas that legislative and executive functions should be vested in one commission.

Turning now from the defects of the law, I desire to call attention to some extraneous conditions and influences which have conduced to rendering the law unenforceable and which, as long as they exist, will render the most perfect law unenforceable.

The interstate-commerce law not only forbids discriminations in freight rates, but it also prohibits free transportation of passengers. It makes the acceptance of a discriminating freight rate or a free pass by an individual a misdemeanor, each punishable alike by fine or imprisonment.

If we examine the principles of law and the principles of sound morals which justify the law we shall find that every principle applies to the one as to the other. If we inquire as to the relative importance to men of small affairs we will find that one is as important as the other. If we inquire into the heart-burnings growing out of railway discriminations, which are breeding class distinctions and class hatred, and even anarchism, among the so-called "lower classes," we will find that the bitterest feelings are aroused by being compelled to pay fare while richer men ride free. If we go among the laboring classes, either as individuals or in their public meetings, we will hear bitter denunciations, not of unreasonable or discriminating freight rates, but of free passes. In times of railway strikes we can hear the park orators proclaim, "Why should we work for scant wages in order that rich men may ride in the trains free?" Probably 80 per cent of the entire population pay fares, while not more than, say, 5 per cent pay freight rates.

The law which makes it a misdemeanor for any individual not an officer or employee of a railway company to use a pass was enacted by Congress and approved by the President fifteen years ago, and as an individual rule of action it was ignored by the Congressmen who passed it and by the President who approved it, and subsequent Congressman and President, with rare exceptions, have ignored its provisions. Traveling, they present the evidence of their misdemeanor before the eyes of the public in a way which indicates no regard for the law. The governors of the States, many of the judges—in short, all officialdom from the highest to the lowest—the higher clergy, college professors, editors, merchants, bankers, lawyers, present the evidence of their misdemeanor in the same manner. Now, while sheriffs, district attorneys, courts, and prisons may cope with the outcasts of society, they are powerless against the classes which have been mentioned. Think of the impossibility of committing these classes to prison! Think of a sheriff arresting himself, of a district attorney prosecuting himself, and of a court committing himself to the penitentiary!

In England, where the laws against discriminations are enforced, these conditions do not exist. The members of Parliament, who enacted the laws, have obeyed the laws, and even the King, when traveling on the railways, pays the regular fare, and if he has a special train he pays the schedule rates for its use. The minor officials, the

railway officials, and the public follow their example. Therefore the law of England against discriminations is effective.

I am not willing to admit that the average standard of official and individual morals is lower in this country than in England, but for fifteen years the public conscience has apparently been in a sort of self-hypnotic trance of an expectancy which can never be realized, namely, that the virtues of the railway companies will render it impossible for the individual to offend the law. While I am willing to admit the uncompromising virtues of railway officials, I submit that it is too much to expect the few railway presidents, who are growing fewer, to furnish the virtues for eighty-five millions of people.

What the country needs to break the trance is an illustrious example, like the example of the King of England. There is one man, and but one man, whose example would be effective; and, unless the American people have misjudged his character, if he realized that he was transgressing the law in accepting the courtesy of free transportation, Theodore Roosevelt would have the virtue and the courage and the ability to set the example, which shall awaken officialdom and all good citizens to a sense of the individual duty to obey this law.

"No one," says Mr. Roosevelt, "can too strongly insist upon the elementary fact that you can not build the superstructure of public virtue save on private virtues."

Thereupon (at 5 o'clock and 35 minutes p. m.) the committee adjourned until to-morrow at 11 a. m.

FRIDAY, *May 12, 1905.*

The committee met pursuant to adjournment.

Present: Senators Elkins (chairman), Cullom, Kean, Foraker, Clapp, and Newlands.

CONTINUATION OF STATEMENT OF MR. JOSEPH RAMSEY, JR.

The CHAIRMAN. Proceed, Mr. Ramsey.

Mr. RAMSEY. When I left the stand on Wednesday afternoon, I asked permission to have printed in the record, with the right to read the following morning, a paper submitted by Mr. E. Michael, chairman of the terminal facilities committee of the Business Men's League of St. Louis. That Business Men's League of St. Louis is the largest, strongest, and most representative organization of St. Louis, including all the business men, manufacturers, and representatives of commercial interests and financial and other interests of St. Louis. It has at least 1,000 to 1,200 active members. It is always fighting the railroad companies for the removal of some discrimination or something which they think works against the interests of St. Louis and in favor of some other community. This paper was submitted by Mr. Michael to the Commercial Club of St. Louis, another strong organization of the most important business men in St. Louis, on February 18, 1905. That club is not permitted, by its by-laws, to meddle or interfere with matters of politics, but they discuss at its meetings matters of public interest and general importance, whether municipal, national, or State. At this meeting they had requested a railroad man to present a paper on

governmental regulation of rates, naturally anticipating that the railroad man would stand up very strongly for one side, and that the chairman of the committee on terminal facilities of the Business Men's League would take the other side.

They also requested Mr. Michael to appear before the committee and state their side of the proposition. Therefore the paper by Mr. Michael is of exceeding interest, and the Commercial Club, contrary to its usual practice, and really contrary to its by-laws, passed a resolution, without a dissenting vote, asking that the papers of both parties be printed and sent to Congress or any body that wishes to consider that matter. Mr. Michael gave permission that his paper be printed and used. It is a very short paper, and I will read it.

The CHAIRMAN. Is it very long?

Mr. RAMSEY. No, sir; it is very short.

The CHAIRMAN. I suggest that you read extracts, and then we can read the whole of it in print.

Mr. RAMSEY. It has been printed.

The CHAIRMAN. In our hearings?

Mr. RAMSEY. Yes, sir.

(Mr. Ramsey thereupon read the paper which has already been printed at the close of his statement on the 10th instant, and appearing at page 66 of the nineteenth day of these hearings.)

Mr. RAMSEY. Mr. Michael speaks of the immense power, and Governor Cummins yesterday admitted that the power, if exercised, would be enormous.

As Governor Cummins spoke about a distance tariff, and as there has been some question about the tariff and methods of basing and establishing rates, I have before me Missouri State tariffs, effective June 17, 1905, based in accordance with the new law in Missouri. The legislature of Missouri took a new departure and fixed the maximum rates on all commodities in that State based absolutely on the mileage basis. This bill was originally brought up and endeavored to put through by interests engaged in the cattle trade. They were the principal advocates, as I understand it. The result of this is as follows:

A farmer can ship a carload of grain 275 miles, for instance—say between Kansas City and St. Louis—at 10 cents a hundred, which, on a 60,000-pound car, the ordinary carload, would be $60 per carload of grain of the value of $400 to $700 for the carload. A cattle dealer can ship the same distance a carload of cattle worth over $1,100 at an average rate of $27 per car. In other words, the agriculturist who raises grain is charged 2½ times as much for moving a carload of grain for the same distance as is charged for moving the carload of cattle.

Take flour, worth on the average 2½ to 3 cents a pound. That is carried for the same distance at 10½ cents per hundredweight, while a carload of crushed rock, worth from 75 cents to $1.25 per ton, or, say one-half of a mill a pound, is carried the same distance for the same rate. In other words, the rate on crushed rock, a cheap commodity that the railroads will haul under their present methods probably 100 or 200 miles for 50 to 75 cents a ton, that tariff puts it on the basis of $2 a ton.

The same discriminations—rank discriminations, far in excess of anything the railroads would contemplate—appear in this governmental rate bill put through by the legislature of Missouri at its last session, and against the protest of almost every commercial body of that State.

The CHAIRMAN. That is the law now in force?

Mr. RAMSEY. That is the law now in force, and it was put in force by the railroad commission on June 17 of this year. I file it here with the entire schedule of rates.

Freight tariffs effective June 17—Classification of commodities, together with rates and distances.

CARLOADS IN CENTS PER 100 POUNDS.

Miles.	Class D (grain, all kinds; minimum weight, 40,000 pounds).	Class E (flour and lime; minimum weight, 24,000 pounds).	Class F (salt, cement, water, lime, and stucco; minimum weight, 30,000 pounds).	Class G (lumber, lath, and shingles; minimum weight, 30,000 pounds).	Class I (agricultural implements, furniture, and wagons, minimum weight, 20,000 pounds).
25	5	5	5	5	7
50	5½	5½	5½	5½	8
75	6	6	6	6	9
100	6½	6½	6½	6½	10
125	7	7	7	7	11
150	7½	7½	7½	7½	12
175	8	8	8	8	13
200	8½	8½	8½	8½	14
225	9	9	9	9	15
250	9½	9½	9½	9½	16
275	10	10	10	10	17
300	10½	10½	10½	10½	18
325	11	11	11	11	19
350	11½	11½	11½	11½	20
375	12	12	12	12	21
400	12½	12½	12½	12½	22

IN DOLLARS AND CENTS PER TON OF 2,000 POUNDS.

Miles.	Stone (undressed), crushed rock, sand, building or paving brick (minimum weight 40,000 pounds).	Miles.	Stone (undressed), crushed rock, sand, building or paving brick (minimum weight 40,000 pounds).
10	$0.40	210	$1.55
20	.60	220	1.60
30	.65	230	1.65
40	.70	240	1.70
50	.75	250	1.75
60	.80	260	1.80
70	.85	270	1.85
80	.90	280	1.90
90	.95	290	1.95
100	1.00	300	2.00
110	1.05	310	2.05
120	1.10	320	2.10
130	1.15	330	2.15
140	1.20	340	2.20
150	1.25	350	2.25
160	1.30	360	2.30
170	1.35	370	2.35
180	1.40	380	2.40
190	1.45	390	2.45
200	1.50	400	2.50

Freight tariffs effective to June 17, etc.—Continued.

IN DOLLARS AND CENTS PER CAR.

Miles.	Class H (live stock in standard cars).	Miles.	Class H (live stock in standard cars).
25	$6.00	237	$23.00
50	9.00	250	25.00
75	11.00	262	25.00
87	11.00	275	27.00
100	13.00	287	27.00
112	13.00	300	29.00
125	15.00	312	29.00
137	15.00	325	31.00
150	17.00	337	31.00
162	17.00	350	33.00
175	19.00	362	33.00
187	19.00	375	35.00
200	21.00	387	35.00
212	21.00	400	37.00
225	23.00		

Mr. RAMSEY. A carload of cattle can be hauled 25 miles for $6, and it will cost for switching and terminal charges at both ends more than this rate, so that it is hauled for nothing. It is hauled 100 miles for $13, 200 miles for $21, and 275 miles for $27.

I will not take up any time of the committee in calling attention to any other weak points and discriminations in that bill. I for one recommended at the meeting to order the absolute enforcement of that schedule. If it had been enforced throughout the State, before the next meeting of the legislature it would have practically paralyzed the local traffic of that State, and in some territories it would have forced a community to depend entirely on one railroad for its traffic, because when you have a line of 300 miles to a certain point and another has a line of 275 miles to that point the short line would take all the traffic, and that community would be dependent entirely on it if the law were strictly enforced.

But no one who has appeared on the other side has advocated any mileage rate. They all say the mileage basis would be absolutely destructive of the transportation of the country.

A question which has been discussed quite fully has been the question of the values of railways now, or what they should earn and return as a fair dividend on the capitalization.

To make a very short statement on that subject, I want to say, as a man who has been building railroads since 1869, who knows something about the cost of railroads in the early days, and who knows a great deal about that to-day, that hardly a railroad in the country, unless it is a small line, whose capitalization to-day represents the cost of that property as it stands. Railroads built years ago, when railroads could be built cheaply, when right of way was given, and you were welcomed with open arms as public benefactors (which is not so to-day), all went by the board practically; they all went into the hands of receivers; the original stock was absolutely wiped out, as were also partially the original bonds which built the roads (admitting that the bonds built the properties in those days), although that was not always the case. The investments at that time in many cases have gone by the board, and if a statement could be made from the reorganization of those old roads and of the losses entailed by

operation for years when they did not pay expenses or dividends, you would find that the $13,000,000,000 does not represent the cost of the property to-day.

Governor Cummins said that he would be perfectly willing that the original cost, or the original capitalization should be used as a basis. I wonder if the governor would recommend the farmers of Iowa, who bought their lands originally at $1.25 to $1.50 an acre, and a great many of them got their lands by squatters' rights without any cost at all—I wonder if the governor would recommend adopting those old values as the present values. You can not buy a good farm in Iowa to-day under $100 an acre, so far as I know.

I have had a little experience lately. We built 60 miles of road, the rights of way of which could have been purchased years ago for a song, but that 60 miles cost, for right of way alone, not including terminal property, over $40,000 a mile. We had to go through farm lands, through villages and small communities, and we had to pay anything the owners asked, because a jury to-day will give them probably more than they ask if the cases go before a jury. That 60 miles has cost, including terminals, over $400,000 a mile, actual bona fide cost.

In other words, if you were to lay down on each rail of the double tracks of that road gold dollars, each one touching the next, and so continued from one end of the road to the other, they would hardly pay for the cost of that road.

That is the way railroads cost to-day. A railroad has to make its revenues, mind you, on rates fixed by the railroads which were built during the economical period, and yet make both ends meet.

Taking the capitalization as it stood, and taking the figures that Governor Cummins gave yesterday, and the results, according to the Interstate Commerce Commission reports for the year 1903 (I have not the report for 1904), are that the total railroad earnings were $1,930,000,000. Of that $1,930,000,000 there was paid out for labor and supplies for the railroads $1,250,000,000. Every dollar that a railroad company pays for expenses is paid to somebody in the United States either for labor or supplies. At least 80 per cent of that is labor, so that at least $1,000,000,000 was paid for labor. There was paid for taxes $75,000,000. Four per cent of the total gross earnings of the railways of the United States was paid in taxes, not in dividends. In dividends there was paid out 3 per cent, and there is a charge of 3.1 per cent on all stocks and bonds, water and all, so called. The amount paid for bonds, interest, and dividends was $404,000,000; that was 3.1 per cent on stocks and bonds of all sorts.

Governor Cummins referred to $165,000,000 earnings from other sources, I think it was, and added that to the result of net earnings from operations. But, gentlemen, that $165,000,000 came from railroad earnings. It was in the original statement of earnings. It came from stocks and bonds and interest held by one railroad company in another. In other words, the $165,000,000 was a duplication of the figures.

Governor Cummins also said that they ought to be operated for 65 per cent. I think, Mr. Spencer, we would be glad to employ Governor Cummins to run all the railroads of the country on that basis.

Governor Cummins made a splendid address, gentlemen—a splen-

did address. I think any of us could speak pretty nearly as well if we did not have to be cross-examined after we got through. But when it came down to the facts, Governor Cummins had to admit that he really did not know anything about the case.

He spoke, for instance, of the packing-house products case, in which he appeared as counsel for the packers. The Commission decided against him; and the Commission decided that cattle should be moved at exactly the same rate as packing-house products to Chicago, and which the Iowa packers did not want. Governor Cummins complains now that the Iowa cattle dealers could not reach the Chicago market against the packers, but at the same time admitted that he had been protesting against that rate on the same ground. In other words, he was at that time an advocate on one side and now he is an advocate on the other.

But take that cattle rate to which I have referred. The Governor said, referring to the St. Paul road, that they put their rates down on cattle so as to avoid disobeying the order of the court, and made the cattle rates on a parity with the other rates; but immediately the other railroads reduced their rates again, so that the evil complained of still exists.

How can you avoid that, gentlemen? Let the Commission, with the power to make rates, say that the rate on this commodity between Kansas City and Chicago shall be thus and so. The railroads interested in that commodity, with that business, between Kansas City and Chicago, or some other point, say at once, "We have got to protect and maintain our patrons and our business;" and they meet the conditions probably by immediately reducing their rates, because they can not advance them. That is beyond possibility under any rate-making proposition. They meet all those conditions, but the discrimination between community and community is still just about as it was before.

There is only one thing to be done, gentlemen, in regard to discriminations between communities. You must equalize all the natural advantages of communities referred to by Governor Cummins. He said you can not take away the natural advantage of New York as a port. But unless you can take away that great advantage which Chicago has as a seaport, as an open waterway, of shipping without breaking bulk clear to the continent of Europe, through the St. Lawrence River and foreign territory by the Lakes—unless you mean that, and unless you mean to put Dubuque, Des Moines, and Sioux City on immense water highways, those natural advantages will continue regardless of what the railroads do or what the Commission does.

Take the grain question at Chicago. While the Lakes are open during seven months of the year, the moment a vessel comes into the harbor of Chicago to be tied up for the winter the grain dealer can go to work and fill up that vessel and get free storage, free of elevator charges until the lake trade opens next year. Long before the lake trade opens these vessels will all begin to receive grain, we will say from January and February, and the railroads can not avoid, even during the close of lake traffic by ice, this parity with the lake rates. What are they? Sometimes as low as three-fourths of a cent a bushel from Chicago to Buffalo, and there the "lake and rail" rates *from Buffalo to* New York are lower than the railroads will accept

As their proportion of the through rate by "all rail," because when the vessel reaches Buffalo it can deliver its grain directly into canal boats and go to New York on a canal rate. Therefore the Buffalo and New York trunk lines, all of them, with which we are forced to exchange our business, have got to meet that condition of the ex-lake grain, as they call it, at probably 3 cents a hundred to New York, while that which goes in cars would have to be transferred into elevators, and from the elevators to canal boats, entailing quite an expense; and on that grain they almost invariably get from 1½ to 2 or 3 cents a hundred more than they do on the ex-lake and the railroads between Chicago and Buffalo. The Wabash, for instance, has got to meet that condition and take its proportionately lower rate than it otherwise would if there was not that lake competition.

You can not equalize those things by any commission. If you do, you have got to put in a commission having full control over all the commerce, the industrial business, and the railroad business of the United States.

The Governor said one thing which I think was very striking. He said that what we want are even conditions, even chances to all points. As I remarked to the Governor after the hearing was over, "What you do want, Governor, is a postage-stamp tariff—2 cents to New York, to Dubuque, or to Chicago. You want the low rates on the long haul and an even chance with everybody else." That is what I think I would call a postage-stamp tariff. A great many letters are carried at less than cost, but the Government foots the bill, as the Government would do in this case, certainly at the end of the year. Then, where would the Government be when called upon to appropriate to make up these railroad deficiencies at the end of the year? The river and harbor bill, the naval bill, and all the others would be but a drop in the bucket compared with it.

The President and some other of the Government officials are now coming out openly for a "maximum tariff." But, gentlemen, you will remember that the advocates of this rate making by the Government do not want a "maximum" tariff. Neither do they want a distance tariff on a mileage basis. In fact, not one of them has been able to tell you anything he does want, except to take away the discrimination now imposed upon him and put it upon the other fellow.

Governor Cummins says they want the lumber rates low into Sioux City because they use lumber there. But they do not want low rates into their territory from Chicago and other points of manufacture of agricultural and other implements. What they want is to buy as low as possible and sell at the highest price.

But taking the maximum rate, what would that mean? Maximum means something at the top, beyond which it would not be necessary or possible to go. It means the highest rates which the railroads ought to be permitted to charge. No gentleman on the other side has been before the committee, that I have heard for several days, but has admitted that the rates themselves were reasonable. No one has told us of an excessive rate.

Senator NEWLANDS. I do not understand it that way. I believe

the contention is that the gross revenue of all the railroads is not unreasonable; but, as to the distribution of rates, some may be unreasonably high, and some unreasonably low.

Mr. RAMSEY. I remember distinctly, and I think the record will show, that Mr. Bacon, when asked about the rate on flour, of which he complained, and of which the millers complained, he said, "No; that rate is not too high; but the wheat rate is too low."

The CHAIRMAN. The live-stock rate in the Southwest has been complained of persistently as being too high.

Senator FORAKER. And so have the rates on lumber to the Southwest and the rates on hay. Those are specific instances.

Mr. RAMSEY. Mr. Higbie, who was on the stand, testified as to high rates to Wichita, 2½ cents per hundred higher than to Kansas City; but when asked whether that Wichita rate was too high, said it was not too high, but he wanted it as low for Wichita as for Kansas City.

The CHAIRMAN. There have been specific complaints to the committee about the freight rates.

Mr. RAMSEY. If any rate is unreasonable, then the power now exists to examine that rate, and, if found to be unreasonable, to reduce it.

The CHAIRMAN. There has been complaint that the lumber rates east of the Mississippi were too high, and there have been like complaints of the live-stock rates.

Mr. RAMSEY. I have no doubt that you can find many rates requiring some adjustment, and the railroads are making adjustments all the time. These meetings of traffic men of the various lines of railways are not to make new rates; they are to adjust and equalize rates and remove discriminations against communities. I have no doubt but that if the Interstate Commerce Commission would go thoroughly into some of these matters and apply the remedy, they would be gradually removed. If anyone is harmed or damaged by an unreasonable rate or an unreasonable discrimination, section 8 of the interstate-commerce law can be brought into play to enforce reparation.

But I am speaking of the maximum rate. The effect of any rate making now would not be to advance any rate. I do not know a single rate that would have to advance to fix a maximum upon. They would take the present rates, and either fix those as a maximum, or reduce the rates to meet inequalities.

A rubber band, for instance, is very elastic at the beginning, but when you pull it out to a certain point, that is the end of its elasticity; and if you go beyond that it breaks, and then the elasticity is all gone.

That is the way it will be with rates. If the railroad rates are stretched beyond the breaking point, then the Government will have to take them, and then, in my opinion, the prosperity of the country will break. I may be wrong about that.

Senator Newlands asked me the other day if I would furnish a statement of the bonded indebtedness and capitalization of the Wabash road. I will either submit the last annual report of the Wabash, or simply submit the last page of that report, which gives a statement of the funded debt and interest charges.

The CHAIRMAN. The balance sheet is what he wants.

Mr. RAMSEY. I will submit that.

Statement of funded debt and interest charges, the Wabash Railroad Company.

Name of bonds.	Date of issue.	When due.	Amount.	Rate of interest.	Interest, when payable.	Annual interest.
				Per cent.		
The Wabash R. R. Co., first mortgage bonds	May, 1889	May, 1939	$33,011,000	5	May and November	$1,650,550
The Wabash R. R. Co., second mortgage bonds	Feb., 1889	Feb., 1939	14,000,000	5	February and August	700,000
The Wabash R. R. Co., debenture bonds	July, 1889	July, 1939	A 3,500,000 B 26,500,000	6	January and July	(a)
Gold equipment sinking fund bonds of 1901	Mar., 1901	Mar., 1921	2,700,000	5	March and September	135,000
Toledo and Chicago division, first mortgage bonds	June, 1901	Mar., 1941	3,000,000	4	do	120,000
Detroit and Chicago extension, first mortgage bonds	July, 1891	July, 1941	3,349,000	5	January and July	167,450
Omaha division, first mortgage bonds	Oct., 1901	Oct., 1941	3,000,000	3½	April and October	105,000
Des Moines division, first mortgage bonds	Jan., 1899	Jan., 1939	1,600,000	4	January and July	64,000
St. Charles Bridge, first mortgage bonds	Oct., 1878	Oct., 1908	468,000	6	April and October	28,080
Kansas City, Excelsior Springs and Northern R. R., first mortgage bonds	Jan., 1901	Jan., 1928	100,000	4	January and July	4,000
Columbia and St. Louis R. R., first mortgage bonds	May, 1902	May, 1942	200,000	4	May and November	8,000
The Wabash R. R. Co., first lien 4 per cent terminal gold bonds	Jan., 1904	Jan., 1954	1,664,000	4	January and July	66,560
The Wabash R. R. Co., equipment gold bonds, Series A	May, 1904	May, 1914	840,000	5	May and November	40,950
The Wabash R. R. Co., temporary 5 per cent collateral notes	do	May, 1907	6,160,000	5	do	308,000
Leased line bonds: St. Louis, Council Bluffs and Omaha R. R., first mortgage bonds	July, 1878	July, 1908	421,000	6	January and July	25,260
Total			100,513,000			3,422,850

[a] Interest payable if earned.

NOTE.—The gold equipment sinking-fund bonds, amounting in the aggregate to $3,000,000, represent the rental for a term of twenty years from March 1, 1901, upon certain locomotives, engines, cars, and other rolling stock. The following sinking-fund payments are provided in the mortgage: Commencing March 1, 1902, and annually thereafter until and including March 1, 1906, $100,000 per annum; commencing March 1, 1907, and annually thereafter until and including March 1, 1916, $150,000 per annum; commencing March 1, 1917, and annually thereafter until and including March 1, 1921, $200,000 per annum.

The Detroit and Chicago extension first mortgage bonds represent an original bonded indebtedness of $3,500,000, less $151,000 bonds retired by the operations of the sinking fund up to June 30, 1904.

The total authorized issue of Omaha division first mortgage bonds is $3,500,000. The total amount issued and outstanding June 30, 1904, is $3,000,000, $500,000 being held in reserve by the Bowling Green Trust Company, trustee.

The Columbia and St. Louis Railroad first mortgage bonds are a part of an authorized issue of $300,000. The remaining $100,000 is in the hands of the Mississippi Valley Trust Company, trustee, to be used in improving the said Columbia and St. Louis Railroad and in the acquisition of additional equipment.

Since July 1, 1903, the following prior lien bonds have been exchanged for Wabash Railroad Company first mortgage bonds: St. Charles Bridge first mortgage bonds, $10,000; St. Charles Bridge second mortgage bonds, $239,000; Brunswick and Chillicothe Railroad Company first mortgage bonds, $264,000. Total amount exchanged, $513,000.

Amount of interest on Wabash Railroad Company equipment gold bonds, Series A, for the first year, ending May 1, 1905, is $40,950. Ten per cent of the principal sum—viz, $84,000—is payable each year, making a reduction in the annual interest charge each year $4,200 until the bonds have matured.

Mr. RAMSEY. Do you want me to go over it?

Senator NEWLANDS. What I want is your stock issues, bonded debt, gross income, and taxes.

Mr. RAMSEY. Do you want the total bonded debt?

Senator NEWLANDS. Yes.

Mr. RAMSEY. Do you want it in detail?

Senator NEWLANDS. No.

Mr. RAMSEY. The total funded debt, including all sinking-fund bonds and leased lines, amounts to $100,513,000. The total annual interest charge is $3,422,850. In that bonded debt is included $30,000,000 of debenture bonds which have had only some slight interest payments on $3,500,000 of debenture A's, on $26,500,000 of B's they have received no returns whatever. So that the $3,422,850 is the interest charge on $70,513,000 of other bonds.

Senator NEWLANDS. What is the stock issue?

Mr. RAMSEY. The stock issue is $24,000,000 of preferred and now $38,000,000 of common; it was $28,000,000 of common until last year, when $10,000,000 of Wabash common was issued to purchase all of the stock of Pittsburg terminal properties for the Wabash company.

Senator NEWLANDS. Regarding the capital stock of the company, I find a statement in Poor's Manual that on March 22, 1904, the authorized capital stock was increased by $50,000,000 common stock to comply with the law of Missouri, which stipulates that the bonded debt of a railroad company shall not be in excess of its authorized capital stock. Has that stock been issued?

Mr. RAMSEY. No, sir; $10,000,000 of that stock was issued. At the time that capital stock was authorized it was simply to comply with the legal requirements of the State. Our attorneys had discovered that there was a question as to the Wabash having a greater bonded indebtedness for the branch lines and other properties it had taken in the original consolidation and reorganization of 1889 than it had stock, and then the following year the Wabash issued $10,000,000, so that there is $40,000,000 of the stock still in the company's treasury unissued.

Senator NEWLANDS. What was that $10,000,000 issued for?

Mr. RAMSEY. For the purchase of the Pittsburg terminal properties, for the Wabash system, and the control of Wheeling and Lake Erie.

Senator NEWLANDS. Was that system subject to a bonded debt?

Mr. RAMSEY. The Wheeling and Lake Erie has a bonded debt of $15,000,000, and the Pittsburg Terminal Company has an authorized bonded debt of $50,000,000, not all issued.

Senator NEWLANDS. Ten million dollars was paid for those properties, subject to this bonded debt, was it?

Mr. RAMSEY. Subject to the bonded debt outstanding. A large portion of that $50,000,000 was reserved for future additions and extensions of the property.

Senator NEWLANDS. Was this $10,000,000 paid for the stock of those companies or for the actual road itself?

Mr. RAMSEY. It was paid for the stocks of the company controlling the Wabash-Pittsburg terminal and the Wheeling and Lake Erie properties. It was an extension of the Wabash from Toledo into Pittsburg territory.

Senator NEWLANDS. Was that stock issued at par?

Mr. RAMSEY. That stock was issued at par. It was issued and exchanged for the stocks of the Wabash and Pittsburg Terminal Railway Company. There was $10,000,000 of that stock. At the time it was issued it was worth about $16 per share on the market. It had nothing, I take it, except a voting value.

Senator NEWLANDS. How do you account for the fact that the stock of the Wabash has no value if it is not able to pay the interest upon its bonded debt?

Mr. RAMSEY. It has some prospective value; that is all there is in it.

Senator NEWLANDS. Prospective earnings?

Mr. RAMSEY. Prospective earnings—earnings which have been prospective since 1889, and probably will be for the next twenty years.

Senator NEWLANDS. Do you regard the Wabash system as overcapitalized in any way?

Mr. RAMSEY. No, sir; it has not been high enough. It has no means to-day of raising any money for any improvements, betterments, extensions, or other requirements of the public except through its earnings. It was reorganized on the exact basis of the debt of the company at that time, in 1889, and when it was reorganized there were $3,000,000 of bonds reserved to take up the underlying bonds of some lines and properties in Missouri. There was not a dollar of bonds reserved for future additions and betterments. But having a first-mortgage bond, a second-mortgage bond, a debenture A bond, and debenture B bond, no one would want to buy a fourth-mortgage bond on that property. Therefore it has to grow out of its earnings.

Senator NEWLANDS. Your reliance, then, for future extensions and improvements is upon the probable earnings of the future?

Mr. RAMSEY. That is the only prospect that the Wabash stockholders have.

Senator NEWLANDS. Any enlargement of your bond and stock issues to meet requirements of the future is dependent upon the probability of increased earnings?

Mr. RAMSEY. That is the only chance at present.

In that connection the debenture B bondholders—probably you have seen it in the newspapers—have appointed a committee, representing some $6,000,000 to $7,000,000 of the bonds, to call on the managers and the directors in the courts to know why they are putting this money back into the property to make it pay, instead of paying it out to the debenture B bondholders under the terms of the mortgage, as they claim.

Senator NEWLANDS. And the stockholders are receiving no dividends?

Mr. RAMSEY. The stockholders are receiving no dividends and can not receive any dividends until the debentures of $30,000,000 have received 6 per cent under the terms of the mortgage.

Senator NEWLANDS. Can you tell me at what rate your road is capitalized per mile?

Mr. RAMSEY. That is, issued capital?

Senator NEWLANDS. Yes; issued capital.

Mr. RAMSEY. It is not hard to get at that. We are operating 2,500 miles, and we have $138,000,000 bonds and stocks of all issues. That is about $55,000 per mile.

Senator NEWLANDS. A little below the average in the United States?

Mr. RAMSEY. Yes.

Senator NEWLANDS. If you should want to extend the improvement charge, you have either got to issue bonds or to issue some part of this $40,000,000 of stock still remaining in the treasury?

Mr. RAMSEY. One or the other.

Senator NEWLANDS. In case you issued that stock, would you issue it at $16 per share?

Mr. RAMSEY. If we wished to issue that stock we would have to sell it for what we could get on the market, which would probably be away below 15 or 16, because if you undertake to issue $20,000,000 to $30,000,000 of common stock which has never received any dividends it is a good deal like the case of the mule who had no pride in his ancestry and no hope of posterity. I think the rate would necessarily be low on the market. I should not want to buy.

Senator NEWLANDS. But later the buyers of that stock would expect interest at par, would they not?

Mr. RAMSEY. They would naturally anticipate, if they took all the risk of buying a stock which was worthless on the market, that when they did get interest they would get a fair interest on the par of the stock.

Senator NEWLANDS. That is the way that so-called capitalization is often effected, is it not, through the necessity of selling either bonds or stock below par, and then, when the earnings increase, by paying interest upon par?

Mr. RAMSEY. That is the way. You can not to-day sell a bond on a new railroad at par. The party who buys it buys it on prospective earnings, just as it would be if a person went into a mining venture in California; it might be a good mine, but it might turn out to be only a hole in the ground, or it might be a salted mine. He must take all the risk. He might pay $1 for a $10 share, and then he is all right if the mine turns out all right.

Senator NEWLANDS. Your contention is, if the United States wishes to inaugurate a system that will result in the lowest capitalization of these roads, with the lowest cost of transportation levied upon the entire commerce of the country, that it would be wise for the Government to see that railroad securities are not imperiled, or at all events, not to take such action as will imperil them?

Mr. RAMSEY. My argument would be that if railroad securities were fairly protected and reasonably treated by the Government, so that the investors in them would feel that, if the property itself was properly located according to requirements of traffic, they would receive fair returns on their stocks and bonds, then, of course, they would be more ready to invest without exacting such a heavy discount as they are doing to-day. It would enhance the values of all the securities if investors had some reasonable certainty that the money invested in railroads would be treated as reasonably and fairly as money invested in mines or mills or any other commercial business.

Senator NEWLANDS. You feel that railroads are subject to attack both by the taxing powers of the various States and the regulating powers of the various States, to which are to be added the regulating powers of the United States.

Mr. RAMSEY. We have all three.

Senator NEWLANDS. You have those three constantly operating. Now, if a simple system of taxation could be devised, fair to the people and fair to the railroads, and mathematically ascertained, so as to avoid the constant trouble you have as to the valuation of your properties and as to tax rates, do you think that would add to the ease of your financing?

Mr. RAMSEY. It would certainly add to the ease of determining what our taxes might be. Whether it would add to the ease of financing would depend largely on what sort of a tax rate the Government might put on, because it might tax us out of existence.

Senator NEWLANDS. I was only speaking, however, of a reasonable tax.

Mr. RAMSEY. The railroads are now averaging at least 4 per cent on their gross earnings.

Senator NEWLANDS. About 3 per cent, I think.

Mr. RAMSEY. Four per cent.

Senator NEWLANDS. The gross earnings are pretty near $2,000,000,000, and the taxes are a little less than $60,000,000.

Mr. RAMSEY. The taxes in 1903 were $75,000,000, according to my information.

Senator NEWLANDS. I think you are mistaken.

Mr. RAMSEY. I may be mistaken in the figures.

Senator NEWLANDS. In the report of the Interstate Commerce Commission it is put down at $57,000,000.

Mr. RAMSEY. Was that all taxes?

Senator NEWLANDS. All taxes, as I understand it, which would be a little less than 3 per cent.

Mr. RAMSEY. Our taxes on the Wabash were 3½, nearly 4 per cent.

Senator NEWLANDS. If a tax of 3 per cent should be imposed, and gradually increased for a period of ten years to 5 per cent, and ending there, would you regard that as an improvement upon the present system?

Mr. RAMSEY. Five per cent would be an outrageous tax. I do not think we are taxed that much in the States, because there we are closer at home and can argue the matter better, where the towns and communities are locally interested; we can get fairer treatment when it comes to taxation at home than we could from the Government of the United States.

Senator NEWLANDS. What would you regard as a reasonable tax?

Mr. RAMSEY. The lowest possible tax—just as in the case of the citizen.

Senator NEWLANDS. I am speaking of the percentage of taxation to be fixed by law, to become universal throughout the States, either to be imposed by the Government or to be imposed by the States, and with a view of remaining permanent.

Mr. RAMSEY. Certainly the present taxes are high enough. They are as high, if not higher, than they really ought to be; they are higher, in my opinion, than the average tax on property of like character.

Senator NEWLANDS. If they were fixed at 3 or 3½ per cent, which, you say, is the rate fixed in your case, then you would hereafter be free of annoyance as to assessments and tax rates. Would you regard that as an advantage?

Mr. RAMSEY. Probably it would not be objectionable to have a fixed tax if we knew that all the railroads that were affected by it in one State or another were exactly on the same basis of taxation. Of course, it is very annoying, to say the least, at times to be taxed in eight or ten different States upon a different basis of taxation in each.

Senator NEWLANDS. As it is now, each one of these systems operates in eight or ten States?

Mr. RAMSEY. The Wabash operates in eight States, and in Canada.

Senator NEWLANDS. Taking them all together, they are subject to forty-five different taxing systems?

Mr. RAMSEY. In all the States; yes.

Senator NEWLANDS. You have heard that the railroads display a great deal of activity in politics—State and local?

Mr. RAMSEY. I know that I have received many requests from political committees for assistance, which we have frequently given. We have to do our duty as citizens.

Senator NEWLANDS. Let me ask you, not in any offensive way, do you think the railroads take part in politics because they want to, or because they are compelled to in order to protect their own property against spoliation?

Mr. RAMSEY. There are gentlemen connected with railroads who frequently have political ambitions themselves. But it must be remembered that they are still citizens, and are not disfranchised because they are railroad men. According to the popular view, a good many of them ought to be in the penitentiary, but still they are in politics. They are in politics on their own account sometimes, and at other times on account of the railroads. But we have just as good a right, legally and otherwise, to appear before any legislature, in person or by proxy, to argue against the passage of a law that will be inimical to our property as any Senator or any Congressman or any business interest in the country has.

Senator NEWLANDS. I concede that, Mr. Ramsey, and I want to say that I should like to see a system inaugurated which would put you to as little trouble as possible; I think it would be better for you and better for the country.

Mr. RAMSEY. Then we would not have to pay so much attention to national matters, although that would not relieve us from the States, because the States select Congressmen and Senators sometimes and send them here, and they would naturally be in politics. The more the government, State or national, undertakes to run railroads, the more the railroads are forced to go into politics.

Senator NEWLANDS. So you think any legislation tending to simplify your taxes and make them more certain and mathematically adjusted will have a tendency to drive you into greater political activity?

Mr. RAMSEY. Not if it was reasonably enforced.

Senator NEWLANDS. I assume that it must be reasonable. You find as to the valuation of your railroad property that the minds of men differ as to the principle to be applied?

Mr. RAMSEY. Yes, sir.

Senator NEWLANDS. Some men think it ought to be applied upon the value of the tracks and right of way; others think your franchise ought to be included; and other men think that the total value of

your stocks and bonds ought to be taken into consideration, and that value divided by the number of miles in the system, and the assessment imposed at that rate. Now, there are varying principles that would bring your assessments all the way from $10,000 a mile up to $60,000 a mile.

Mr. RAMSEY. That is all true, absolutely true.

Senator NEWLANDS. And that condition varies in every locality and every State according to the minds and judgments or prejudices of men; is not that the case?

Mr. RAMSEY. That is absolutely correct.

Senator NEWLANDS. Do you regard that, either from the standpoint of principle or from the railroad standpoint, as a wise system?

Mr. RAMSEY. No, sir; it is very objectionable to us.

Senator NEWLANDS. Would you deprecate the effort of the Congress of the United States, if it can constitutionally act in that matter, to introduce a simpler system?

Mr. RAMSEY. No; I certainly should not.

Senator NEWLANDS. That would involve no greater burden than obtains now.

Mr. RAMSEY. I certainly should not deprecate any such system as would simplify the matter.

I can give you an illustration, if you will permit me, of the way they do it sometimes. I claimed in Indianapolis that the Cincinnati, Hamilton and Indianapolis road was a local Indiana road; the Cincinnati, Hamilton and Dayton was an Ohio road. The Cincinnati, Hamilton and Dayton was fully taxed in Ohio on its gross earnings, value of property, and everything else. The Indiana gentlemen admitted that the Cincinnati, Hamilton and Indianapolis was a poor road, doing but a small business, but they said it is owned by a very wealthy corporation in Ohio. I said then, "I suppose if I was doing a dry goods business in Indianapolis and had a brother-in-law in New York who was wealthy, I would be taxed a good deal higher than the man alongside of me who had no rich relations." They catch them "comin' and gwine."

Senator NEWLANDS. I think so. And on the other hand the constant activity that is required from railroads to meet these emergencies is often likely to result in the organization of a political machine that goes a little beyond the mere matter of protection and goes into the domain of control of government, is it not?

Mr. RAMSEY. Railroads are certainly in politics when it is necessary to their welfare.

Senator NEWLANDS. And that is what we want to avoid.

Mr. RAMSEY. Exactly. Somebody has got to be in politics, though; and I certainly think an interest which represents one-fifth, at least, of the population of the country has a right to be in politics.

Senator NEWLANDS. It certainly has.

Mr. RAMSEY. In a proper way.

Senator NEWLANDS. In a proper way. There is no question about that.

Mr. RAMSEY. While we are on that subject of taxation I would like just to say one thing. It is urged by some of the advocates, and the President himself in his speech the other day in Denver said that we have taxation which is objectionable—we have tax laws and

tax legislation which is objectionable—but still we have it, and therefore there should be no more objection to the rate regulation. That was the tenor of his remarks. You all read them. Gentlemen, rate making by government is a very different matter from taxation. Taxation applies to everybody. Everybody is bound by the laws relating to taxation. We all have to pay our taxes. Rate legislation, on the other hand, applies only to one interest in this country in the nature of a taxation or as affecting their income. The laws relating to taxation are general laws, and must, under the very conditions of the State laws and constitution, apply equally to all people in the State. Therefore taxes can not be raised unduly in general without everybody rebelling against it. But everybody, gentlemen, that could save a few cents—every class, every interest that could save a few cents by getting the Commission to make a low rate—would be benefited by a low rate to that extent, while the railroads are the only ones injured. That is class legislation, while taxation is general legislation—as different as day and night.

Senator NEWLANDS. But assuming that this power of legislation exists, and is to be exercised, it would be wise to introduce a system that would make the different factors in the calculation with a view to a reasonable adjustment as certain as possible, would it not?

Mr. RAMSEY. Yes; I think anything that reduces it to a system is desirable.

Senator NEWLANDS. Under the present conditions, if you did not look after your taxes and did not look after politics regarding them, have you any doubt that that total tax would be raised gradually from $57,000,000 to $100,000,000?

Mr. RAMSEY. Well, it has been going up very rapidly. The Wabash to-day is paying nearly twice as much taxes as it paid ten years ago, when I went with it.

Senator NEWLANDS. That tax, then, when you come to the question of regulation, is imposed upon transportation as a part of the general cost of transportation of the country, is it not?

Mr. RAMSEY. It is necessarily a portion of the cost of the transportation.

Senator NEWLANDS. Yes; and any regulating body has to take into consideration your operating expenses and your taxes?

Mr. RAMSEY. All items; taxes, fixed charges, etc.

Senator NEWLANDS. So that, as a matter of regulation, it would be a wise thing to reduce this to a mathematical certainty, and not leave it all afloat, so far as taxation is concerned?

Mr. RAMSEY. There is no objection to having certainty in regard to taxation.

Senator NEWLANDS. Regarding the power of regulation: Assuming that the Interstate Commerce Commission should have the power to fix the rates, you would expect them to allow your operating expenses, your taxes, the amount that you expended for the maintenance of your property in its present condition, or in good condition; you would expect them to allow the interest upon your debt; you would expect them to allow a return to the stockholders upon their capital; the latter item, then, is the only indeterminate thing as yet. What return would you expect for the stockholders?

Mr. RAMSEY. Well, of course that depends largely on the risk

they have run, how long they have carried their stock without any returns, and so on. If it was a fixed, absolute quantity, so that we could go on the market to-day and say to anyone, "We can guarantee 5 per cent on this stock," you could sell all the stock you wanted for building all the railroads in the country on that basis.

Senator NEWLANDS. In the future?

Mr. RAMSEY. Yes, sir; if you could guarantee a 5 per cent stock. But even if the rates are made reasonable, even if the rates are made liberal by the Government or the rate-making power, there is always this great uncertainty in railroad matters—if you are able to earn straight along 5 per cent on your stock, you are going to have competition. Another railroad will be built, if it is sure of 5 per cent also. They will be as thick as crossroads. Admitting, however, that to-day and for the last two or three years we have had prosperous times, and that the railroads have made enormous earnings—admitting all that, you need only go back eight years to the most depressed period of earnings of railroads in the last twenty-five years—to 1896, 1897, when the earnings of the Wabash road, to cite them alone (and they are only on a parity with all others), were $11,550,000 on 2,000 miles of road, lower than they had been for fifteen years prior to that; and seven years prior to that they had just gone through a reorganization. Gentlemen, when the camel has exhausted his load of fat he has got to be turned out to pasture for a while or he can not travel across the desert. He has got to go to some oasis to store up his load of fat. And that is what we must do during the prosperous seasons. During the thin season we have got to skin along just as closely as we can to avoid going into the hands of a receiver. We have got to cut improvements entirely out; we have got to cut repairs to the very lowest notch; and then when the business begins to come back we have got to put all the money back in to grow up again to the requirements. That is the condition of the railroads to-day. I venture to assert, from data that I have, which is not complete, that during the past seven years alone the railroads of the United States have spent a billion and a half dollars simply to make good—not to add new property, practically, to their operations—but to make good the depreciations during the poor period of 1893, 1894, 1895, and 1896, and to replace the old, obsolete equipment (a great deal of it due to the interstate-commerce laws) with modern equipment, in order to do the business of the country. While it looks as if there was lots of profit in the business, when you see 3 per cent on an average paid on the stocks and a hundred and seventy-five or two hundred million dollars of surplus, that surplus has gone back into the property. It is not put in stock that is going to call for increased fixed charges in the future.

Senator NEWLANDS. When you put it in the property, is stock or bonds issued for it?

Mr. RAMSEY. Not in these cases; no, sir. That is the benefit to the public of this country. Every dollar that goes into the property from earnings is a dollar taken from the stockholders and given to the public. If the railroads did as they do in England and capitalized every dollar of additions, and a great deal that is not additions, and got out new capital, we would soon have $250,000 a mile too, like England; and then you would have to pay 4 per cent on that.

Senator NEWLANDS. Your contention is, then, that the low mileage cost in this country, as compared with England, is partially due to the fact that the railroads have put a large proportion of their earnings into the betterment of their roads?

Mr. RAMSEY. No, sir; the low mileage cost is increased by what we put into the property in that way, temporarily. For instance, if we spent a million dollars on the Wabash last year we put $2,500,000 back into the property that——

Senator NEWLANDS. I mean the low mileage capitalization.

Mr. RAMSEY. Yes; that is what keeps the capitalization down.

Senator NEWLANDS. The low mileage capitalization is kept down by the fact that you put earnings into betterments?

Mr. RAMSEY. Yes, sir.

Senator NEWLANDS. Then, as I understand it, you say that if the railroads could be secure of 5 per cent upon their stock, year in and year out, lean years as well as good years, it would stimulate all the railroad building that would be required in this country?

Mr. RAMSEY. Yes, sir; if there was a certain return on the stock; even if there was a sure return below 5 per cent.

Senator NEWLANDS. Even 4 per cent would do that?

Mr. RAMSEY. If it was sure; it would be like a bond; it would be above par or around par, I think.

Senator NEWLANDS. Is there not something that can be done in this matter?

Mr. RAMSEY. Yes; the Government might guarantee fixed charges and 4 per cent on the capital stock.

Senator NEWLANDS. The Government might guarantee it?

Mr. RAMSEY. Yes; that is the only way I know of to guarantee it.

Senator NEWLANDS. Taking a period of twenty years, under such conditions, do you think that the Government would be compelled to pay the guaranty?

Mr. RAMSEY. No; I do not think it would. I think it would raise the rates all along the line. If you want to know what governmental control means you have only to look at the case of the railroads that have absolutely pure governmental control—not England; it is high enough there, but England wants you to compare with Germany, where there is governmental control, where they have a zone tariff, and everything within a certain distance pays a certain price and everything beyond that in another zone pays another price, and so on.

One of our foreign friends, illustrating that matter, said: "I am the manager of a large railroad. It is purely under government control. I have a staff of 11 officials to do what three men do for a general manager in this country. I come to my office early and I find that a certain official is not there, and it is continually that way." (This is the statement of this railroad man.) "I go to him and say: 'You must do like I do; get down here and work.' A few days later I run against the minister, and he says: 'You are too hard on my Mr. So-and-so. I want him to stay in there and I want you to treat him all right.' So it goes with the others down the line." And he says there is in that country, in the various places there, two or three men doing what one man does in this country for the American railways.

Senator NEWLANDS. So that your opinion is that the country would *not prosper* under Government ownership?

Mr. RAMSEY. That is my decided opinion. I do not see how it can.

Senator NEWLANDS. Is there not some action that we can take by legislation without Government ownership that will so protect your business and at the same time protect the public as to fairly insure you 4 or 5 per cent upon your capital stock year in and year out? How would it do, for instance, to limit the dividends to 5 per cent, permitting the corporation, however, in the good years to put the excess into a guaranty fund, to be used as dividends for the poor years?

Mr. RAMSEY. What sort of a guaranty would that be?

Senator NEWLANDS. It would be the guaranty derived from the excess earnings of the prosperous years.

Mr. RAMSEY. Yes; but I would not consider that any man was guaranteeing me a fixed interest if he says, "If we earn enough this year to pay your 6 per cent we will pay you."

Senator NEWLANDS. I am not talking about a Government guaranty.

Mr. RAMSEY. Oh! There can be no other guaranty in the railroad proposition except the Government guaranty. The railroad has got to confront competition that is severer than the competition between any sort of industrial combinations. An industrial plant like the United States steel can go in and buy up all the ore lands to get its protection, if it wants to; but a railroad can not buy up a section of the country and say: "We are going to get all the traffic; you can not come in here."

Senator NEWLANDS. Mr. Ramsey, assume that all these railroads were combined in one corporation; a great deal of this difference in rates as to points of competition, railway competition—I am not referring now to water competition—would disappear, would it not?

Mr. RAMSEY. You mean the difference in rates or the competition?

Senator NEWLANDS. The difference in rates would disappear?

Mr. RAMSEY. Yes; and the competition would disappear. There are no differences in rates as between a competitive point by one road and another road. They are exactly the same.

Senator NEWLANDS. But there is a difference in rates as between a competitive point and a noncompetitive point?

Mr. RAMSEY. Yes, sir.

Senator NEWLANDS. Even though the noncompetitive point may be nearer the point of shipment than the other?

Mr. RAMSEY. Yes, sir; that is true.

Senator NEWLANDS. Would not a good deal of that disappear?

Mr. RAMSEY. It certainly would, I think.

Senator NEWLANDS. It would disappear if there was a combination of any kind, either in the shape of pooling or combination of ownership, would it not?

Mr. RAMSEY. I think it would, whether it was governmental control or individual control of all the railroads.

Senator NEWLANDS. In your judgment, as to which inequality is there the most complaint in this country—the inequality that is occasioned by a natural cause, the convenience of water transportation, or the inequality that is caused by the competition of intersecting railways, taking it in the aggregate, throughout the United States?

Mr. RAMSEY. I may be wrong, but I do not see how you can separate those two influences.

Senator NEWLANDS. They do not prevail at every competing point, do they?

Mr. RAMSEY. Practically at every competing point. That is, on long-haul business, and of course long-haul business is what brings in the question of long and short haul.

Senator NEWLANDS. Do you think that in every case where this inequality exists it is the result of water competition?

Mr. RAMSEY. In almost all cases.

Senator NEWLANDS. Let us see. Take the case of Philadelphia and Pittsburg——

Mr. RAMSEY. Yes.

Senator NEWLANDS. One in the eastern part of the State, the other in the western part of the State, and about 300 miles apart, I believe?

Mr. RAMSEY. Yes; 350 miles.

Senator NEWLANDS. There is practically no competition as to all the points on the Pennsylvania railroad between Philadelphia and Pittsburg, is there?

Mr. RAMSEY. Oh, there are a number of competitive points between Philadelphia and Pittsburg. Harrisburg has several railroads.

Senator NEWLANDS. But as to most of the points?

Mr. RAMSEY. The Pennsylvania Railroad has an immense local territory in which it has practically no direct competition with other railroads.

Senator NEWLANDS. The topography of the country makes that possible, does it not?

Mr. RAMSEY. At its local stations; but the Pensylvania Railroad has ample competition of the strongest kind, and as to all of its traffic which it hauls from Philadelphia or to Philadelphia or Pittsburg, or to and from the coal regions, or the iron fields there is the sharpest kind of competition.

Senator NEWLANDS. At Pittsburg the competition that the Pennsylvania meets in taking traffic from Philadelphia to Pittsburg has been mainly that of the Baltimore and Ohio road, has it not?

Mr. RAMSEY. No, sir.

Senator NEWLANDS. What other road?

Mr. RAMSEY. It has competition by the Buffalo, Rochester and Pittsburg and the Philadelphia and Reading of a very strong kind.

Senator NEWLANDS. Does the Philadelphia and Reading go as far as Pittsburg?

Mr. RAMSEY. The Philadelphia and Reading and the New York Central and the Buffalo, Rochester and Pittsburg have a traffic agreement which opens up through the Buffalo, Rochester and Pittsburg (the Pittsburg end of the line), which opens all of the Philadelphia and Reading and New York Central territory, including Philadelphia, to competition with the Pennsylvania Railroad. The president of the Buffalo, Rochester and Pittsburg, with which the Wabash Railroad has been considering a traffic alliance at Pittsburg, advised me a short time ago that his last report showed that during that period his line had taken 57 per cent of the Philadelphia and Pittsburg traffic as against the Pennsylvania Railroad. So there is competition.

Senator NEWLANDS. There are, then, three competitive systems between Philadelphia and Pittsburg, are there not?

Mr. RAMSEY. No, sir. Then there comes in the Erie road, also, that handles business in that way.

Senator NEWLANDS. That is four. What other one?

Mr. RAMSEY. Then there is the Lehigh Valley and the other lines through their connections with the Pittsburg and Lake Erie and the Lake Shore line; they go away around that way.

Senator NEWLANDS. That makes five.

Mr. RAMSEY. Railroads haul freight 400 miles around sometimes to meet a point in competition 200 miles away.

Senator NEWLANDS. Yes. That makes five?

Mr. RAMSEY. Yes.

Senator NEWLANDS. Between those two points is there any water competition?

Mr. RAMSEY. No. There used to be the old State canal.

Senator NEWLANDS. So that as between those two points there is no water competition?

Mr. RAMSEY. Not as between those two points.

Senator NEWLANDS. And yet Pittsburg and Philadelphia have the advantage in transportation over intermediate local points, do they not?

Mr. RAMSEY. I do not know, of course, their schedule of rates there.

Senator NEWLANDS. It is fair to assume that they do?

Mr. RAMSEY. No; I should think not, of any intermediate points. There may be some local station at which they may pay the agent $60 a month and get $60 worth of business where they charge the highest rate they can get on dry goods, groceries, and so on; but take Johnstown, take Conemaugh——

Senator NEWLANDS. Let me pursue this a little further. That is a case where there is no water competition, and yet the advantages in the way of competition enjoyed by Pittsburg in traffic with Philadelphia, over and above all the intermediate points, give it an advantage in freight that would tend to increase the population and wealth of that place as compared with intermediate points?

Mr. RAMSEY. It certainly would.

Senator NEWLANDS. Then, if all these railroads were in one system, that advantage would disappear, would it not?

Mr. RAMSEY. No, sir.

Senator NEWLANDS. You think that in making a tariff Pittsburg would be given the advantage still?

Mr. RAMSEY. It might not be given any advantage on the tariff.

Senator NEWLANDS. I am talking now about an advantage purely through the tariff, nothing else.

Mr. RAMSEY. You asked me if its prosperity would not disappear.

Senator NEWLANDS. No; I did not ask that.

Mr. RAMSEY. If its advantages would not disappear?

Senator NEWLANDS. I mean its advantages as to transportation.

Mr. RAMSEY. Oh, of course if there was a difference of 10 cents a hundred on freight, that little advantage would disappear.

Senator NEWLANDS. Yes; very well. And yet that is a disadvantage that is complained of, is it not? The complaint that we hear and the evil that we are called upon to remedy is the inequality as to transportation.

Mr. RAMSEY. I have never heard, and I doubt if the Commission

has ever heard, a case of complaint from any local point between Philadelphia and Pittsburg; but they have had numerous complaints of Pittsburg not having proper rates, and so on, to the seaboard, because Pittsburg is not in competition with Altoona or with Tyrone forges or with those small stations along the road. It is in competition with Cleveland and with the entire lake front, where the mills are going in preference even to Pittsburg, nowadays, upon the lake.

I want to show you why these things must be. It would be of no advantage to a small town which did no manufacturing business, probably, or even if it did a little, to have Pittsburg shut out of the market as against Cleveland and Toledo and Lorain and Buffalo and all those lake ports where the ore comes down by water transportation, and the coal and coke from Pennsylvania and West Virginia are hauled there on low rates. That is to-day the cheapest kind of production, by long odds, for iron and steel.

Senator NEWLANDS. But recollect that in this illustration I am confining myself entirely to the question of transportation between Philadelphia and Pittsburg.

Mr. RAMSEY. Of course if you come down to that one point, as to the difference in rates, there would be none.

Senator NEWLANDS. I ask whether the consolidation of all of these five elements which are now in competition would not tend to a greater equalization of the rates as between the local stations and the terminal stations?

Mr. RAMSEY. Well, if they were all noncompetitive Pittsburg would be put on exactly the same parity of rates by the one line as the lake ports are—Cleveland and the other places; and if they had to make the same rates, or no higher rates than Pittsburg had to intermediate points between Pittsburg and Philadelphia, they would get the same rate as Pittsburg would have to Philadelphia.

Senator NEWLANDS. Yes.

Mr. RAMSEY. That would be the case if they were all put on that parity of rates. But then there would be an advance of the entire schedule of rates. If one company owned all the railroads, or the Government owned all the railroads, the first move, if they undertook to reduce some rates, would be to advance others, and the advanced rates would be the extremely low ones, and we would get to what I referred to while you were out as what I thought would suit Governor Cummins, a postal stamp rate—the same rate from one point to any other point.

Senator NEWLANDS. What I am unable to reconcile is this: It is insisted by the railway men here that whenever a railroad that is in control of certain territory is intersected at certain points by another railway system, that means immediately a cutting down of the rate at those intersecting points.

Mr. RAMSEY. If it is a new road, it generally means that.

Senator NEWLANDS. And that it does not mean the cutting down of the local rate?

Mr. RAMSEY. That is true. That is a square business proposition.

Senator NEWLANDS. It seems to me logically it must follow that if these two roads become one the necessity for this cutting of rates at the intersecting point disappears.

Mr. RAMSEY. That is true, if it is only due to the competition

between the two railroads it would disappear and the connecting-point rate would be advanced and the intermediate-point rate would not be decreased.

Senator NEWLANDS. That is right. That may be. But there would be greater equality of rates?

Mr. RAMSEY. Certainly there would be greater equality of rates. The railroads in a case like that do exactly like the business man does. If he sells at home where he has no competition, or the competion has to pay rates to get there, he sells at a higher price than he will sell 100 miles away from home, where he has to meet the other fellow on his own ground, and he reduces his prices; just exactly as our steel barons sell abroad for $8 or $10 a ton less on their steel than they will sell to our railroads. But the Government tariff regulates that. That is an example of governmental regulation.

Senator NEWLANDS. Suppose the Government concluded to own these railways, and should organize a bureau of transportation in connection with the Post-Office Department and put at its head one of the best traffic managers of the country—yourself, for instance. Assume that we should simply leave the bonds existing, to be replaced later on, as they mature, by Government issues at 3 per cent, and simply condemn the interests of the stockholders, which are valued now at about $6,000,000,000, I believe, and issue bonds for that stock at the rate of 3 per cent, and that we should have a fund into which all the moneys received from transportation should go, and from which the operating expenses and the taxes and the interest upon the bond issues should be paid, with a sinking fund out of the net earnings for the payment of the bond issues——

Mr. RAMSEY. If you had any.

Senator NEWLANDS (continuing). And leaving the entire railway service just as it is, organized as it is, with its traffic managers and station agents and employees; do you think if you were charged with the control of such a bureau, and had a free hand in its administration, with no check upon you except that you should not make a contract for construction or otherwise without having the money and the fund to pay for it, that you would have much difficulty in managing the entire railway system of the country?

Mr. RAMSEY. And making it support itself?

Senator NEWLANDS. Yes.

Mr. RAMSEY. And pay these charges?

Senator NEWLANDS. Yes.

Mr. RAMSEY. With a free hand?

Senator NEWLANDS. Yes.

Mr. RAMSEY. And no check?

Senator NEWLANDS. Yes.

Mr. RAMSEY. I would guarantee it. I would make the rates that would meet the situation. There would be no competition, and of course then the business would all have to flow——

Senator NEWLANDS. Do you mean to say that you would have to raise the rates in order to do it?

Mr. RAMSEY. No; I would simply equalize them.

Senator NEWLANDS. You would equalize them?

Mr. RAMSEY. I would equalize them. I would remove discrimination by bringing up the low wheat rate, but probably not reduce the reasonable flour rate.

Senator NEWLANDS. If you did that that would mean a larger gross income, would it not?

Mr. RAMSEY. No; it would not mean a larger gross income, because I am afraid that while I would be expected to have a free hand I would have lots of friends calling on me and saying, "Look here, if you want to hold this job I want you to put in So-and-so, if you want my aid and assistance in keeping in there;" and "Such and such a man is valuable to the party; you want to see that he is supported down here."

Senator NEWLANDS. But if you had a free hand you would not yield to such influence?

Mr. RAMSEY. I would soon yield my position, unless it was a life job; and then I would be impeached, I am afraid.

Senator NEWLANDS. We are talking about the financial status of the thing. You would not expect any action that you would take to increase the gross income, would you, except as it would come through increased business?

Mr. RAMSEY. I believe if the railways were all brought together under one management to-day, and had the gross earnings they have, and could call on the Government, as you state, for any growth or reasonable or proper growth, that any good, experienced railroad man with, of course, an immense staff—because it is a tremendous job——

Senator NEWLANDS. Would you require an increase in the present staff?

Mr. RAMSEY. But there are a great many staffs to-day.

Senator NEWLANDS. I understand; but my plan involves the utilization of every staff that exists, simply eliminating the unnecessary ones.

Mr. RAMSEY. I understand; but one man himself, as the president or manager, can not oversee directly 202,000 miles of road. It is a big job to oversee 3,000. He would have to have increased assistants and a commission.

Senator NEWLANDS. Do you mean that you would require more traffic managers than now exist?

Mr. RAMSEY. No; I would reduce them largely, because there would be no need of their fighting and scrambling for traffic all the time.

Senator NEWLANDS. Then you would receive the same gross income, though you would equalize the rates?

Mr. RAMSEY. Yes, sir.

Senator NEWLANDS. And you would pay out the moneys received, first, in operating expenses; second, in taxes, if the Government concluded to pay the present taxes; and, third, you would put a lot of money into betterments and improvements, would you not?

Mr. RAMSEY. No. I presume, under your first statement, I would be restricted by the law to operating the property and to paying dividends——

Senator NEWLANDS. What dividends?

Mr. RAMSEY. These bonds—these fixed charges; then, on the bonds that you spoke of.

Senator NEWLANDS. Yes.

Mr. RAMSEY. And then turn the surplus, if there was any, into the

same place where the post-office surplus goes—into the Treasury of the United States; and then draw it out, afterwards, on appropriations for new lines.

Senator NEWLANDS. No, sir; I would have you do as we do with the irrigation fund.

Mr. RAMSEY. I do not know anything about that.

Senator NEWLANDS. We organized the irrigation and reclamation service of the country, and put all the proceeds of the sale of public lands into that fund, and we have given the Secretary of the Interior a free hand to go and construct all the irrigation works of the country, provided that the only limitation upon his power shall be that he shall not make a contract for any construction unless the money to respond to that contract is in the fund. He has an absolutely free hand as to salaries and employments and everything of that kind, and we do not hear a word about political difficulty or political influence.

Senator KEAN. You were not present the other day when there was complaint, Senator.

Mr. RAMSEY. I heard it criticised the other day.

Senator NEWLANDS. It was not justly criticised. I should like to have been here to hear it.

Mr. RAMSEY. I do not know anything about that.

Senator NEWLANDS. With these $2,000,000,000 you would have to pay in operating expenses about one billion three hundred millions—these two billions of revenue, we will say——

Mr. RAMSEY. No; pretty near one billion.

Senator NEWLANDS. One billion?

Mr. RAMSEY. One billion. It would be pretty near 70 per cent of the earnings, whatever they are.

Senator NEWLANDS. That would be one billion four hundred millions; and you would have to pay the present interest charge; you would have to pay taxes, say, of $60,000,000; that would be $1,460,000,000; and you would have to pay the present interest charge until it was reduced by new bond issues, of about $260,000,000; that would make $1,720,000,000; and you would have to pay 3 per cent on about $6,000,000,000 of bonds issued for that stock, which would be $120,000,000 more. That would be $1,840,000,000. You would have then $160,000,000 left either for your sinking fund or for betterments or improvements, would you not?

Mr. RAMSEY. According to that calculation, yes, sir. It figures out all right.

Senator NEWLANDS. With the present rates, your gross income of these railroads is increasing at the rate of about $150,000,000 annually, is it not?

Mr. RAMSEY. No, sir; it increased in 1904 $60,000,000 over 1903, and this year I doubt if it will increase at all. It has reached the crest of the wave, I think.

Senator NEWLANDS. Let us see about that. Are you not mistaken?

Mr. RAMSEY. I may be, but I do not think I am. I am speaking from recollection.

Senator NEWLANDS. The Interstate Commerce Commission's report for 1903 states that the increase for 1903 over 1902 was $174,000,000.

Mr. RAMSEY. That was over 1902?

Senator NEWLANDS. Yes.

Mr. RAMSEY. The increase of 1904 over 1903, I think, is about sixty-three or sixty-six millions.

Senator NEWLANDS. At all events, it is increasing?

Mr. RAMSEY. From 1902 to 1903 was the boom period, as we call it. Everything was away up. Now it is sliding off.

Senator NEWLANDS. Do you agree with the statement of Mr. Morawetz that within seven years, under present conditions, the total tonnage of the country will be doubled?

Mr. RAMSEY. I do not. Within those seven years it will be considerably below what it is to-day, I think.

Senator NEWLANDS. The total tonnage will be less than it is to-day?

Mr. RAMSEY. Yes, sir; and then it will go up again, I think.

Senator NEWLANDS. But running over the period of ten years, you would expect a considerable increase, would you not, in the total tonnage?

Mr. RAMSEY. The country is growing and developing rapidly. More people are coming in—23,000 came in the other day in one day. Of course the country is growing rapidly, and we have got to grow with it.

Senator NEWLANDS. Do you not think, if you had a free hand in this matter, such as the Secretary of the Interior has regarding the reclamation service, that you could take hold of this entire system under Government ownership and do everything that has to be done or that ought to be done in the way of improvements and extensions, and provide a sinking fund that within thirty or forty years would entirely extinguish the debt?

Mr. RAMSEY. I could with a free hand, provided I lived thirty or forty years; but that means a free hand, as you say.

Senator NEWLANDS. Mr. Ramsey, understand me, I do not favor Government ownership myself, but I do insist upon it that it is Government ownership or national incorporation or control that will prevail in the end. I want to ask you a few words about national incorporation. Your railroad is incorporated under the laws of what State?

Mr. RAMSEY. Under the laws of the States of Ohio, Missouri, Illinois, and I do not know how many other States.

Senator NEWLANDS. You do not mean to say that it is incorporated under the laws of each of those States? There must be some original State in which it is incorporated.

Mr. RAMSEY. It is formed, like a great many other railroads—like most of the railroads to-day—of companies which were originally organized as short lines; roads that were in the different States. You can not build a mile of railroad in a State without having a franchise in that State.

Senator NEWLANDS. Yes.

Mr. RAMSEY. Therefore the consolidated road can be organized in any one of the States, but the organization papers and everything have to be filed in all the States, and you are subject to the law of the State in which you are organized—that is, consolidated. For instance, we are consolidated under the laws of Ohio, but at the same time we are subject to all the laws of the States in which the original companies were organized and in which we operate; so that we are really subject to the laws of all the States. You will notice that on

account of the Missouri law we had to increase our stocks. You referred to that.

Senator NEWLANDS. Yes.

Mr. RAMSEY. On account of the Ohio law we did not have to do that, but we have to comply with all the laws of the States through which we operate, where the law of the State in which you organize your consolidated company is not in accordance with the laws of the other States.

Senator NEWLANDS. Do you call that a simple system?

Mr. RAMSEY. No; it is not very simple, but we are used to it. It is a good thing for the lawyers; I will say that.

Senator NEWLANDS. You have really forced your way through all these difficulties until you have established a great system?

Mr. RAMSEY. Yes, sir.

Senator NEWLANDS. That is worked as one system?

Mr. RAMSEY. Yes.

Senator NEWLANDS. In which State was your system first incorporated?

Mr. RAMSEY. Oh, I could not say; that was before my time. Of course, the first Wabash road was away back in the fifties. The old original Wabash line is fifty years old. The consolidation of this company, the present company, was made under the laws of Ohio, and of course in conformity with the laws of the other States; but we hold our domicile in Ohio, and our annual meeting is held in Toledo, Ohio.

Senator NEWLANDS. As to all other States, then, you are a foreign corporation, existing there only by the comity of those States, and operating there ony by the comity of those States?

Mr. RAMSEY. No, sir; we are citizens of each of the States in which we operate.

Senator NEWLANDS. You regard yourselves as citizens of each one of the States?

Mr. RAMSEY. Yes, sir.

Senator NEWLANDS. Would you regard it as an improvement upon that system if corporations could be organized under a national charter?

Mr. RAMSEY. I should not like to discuss that, because I have given it no thought at all; I am not competent to discuss it. That is a legal proposition upon which I would like to have the opinion of our legal department.

The CHAIRMAN. The committee is indebted to you, Mr. Ramsey, for the statement that you have made, and for the patience and ready answers that you have given to all questions.

Mr. RAMSEY. There is one more thing that I would like to say: In reply to one of your questions the other day, Senator Cullom, in regard to the safety-appliance act, etc., I made a statement that the safety appliances frequently resulted in the very thing they were intended to prevent—the loss of life and limb—under certain conditions. One of those instances occurred yesterday, through a broken hose. A freight train was running into Harrisburg at a higher rate of speed than it would have been running under any conditions with the air brakes; and a broken hose, a burst hose, which might occur

on any train at any time—it is beyond human possibility of prevention—caused the emergency brake to be applied, buckled out the freight train, and the passenger train ran into it. That does not speak against the increased safety of the air brakes, but it simply illustrates the point that I referred to, as to causing, in some cases, the loss of life and limb.

Senator CULLOM. It was certainly a most fearful calamity.

Senator KEAN. As I understand it, the coupler broke, the hose broke, and that put on the brake, and one of the cars of the train was weaker than the other, and it buckled up and threw the cars on the other track?

Mr. RAMSEY. No, sir. I do not understand that it was due to a weaker car, although it might have been. But it might occur just as well with cars of the same strength. A freight train is a long train of 50 cars or so. It is different from a passenger train; and between each car there is from 2 to 3 inches of slack; and when the air brake goes on it goes on with power stronger than the power in front, really, and the cars close up with a sudden and tremendous power; and if it is on a curve the cars will shoot out to one side. It was not a broken coupler that caused the accident. It was a bursted hose.

Senator KEAN. A hose?

Mr. RAMSEY. Yes; it got a leak in it; and the minute there is any air discharged from the train pipe the emergency brake goes on, and that means a sudden stop, almost a collision.

STATEMENT OF MR. T. B. HORD.

The CHAIRMAN. State your name, residence, and occupation.

Mr. HORD. T. B. Hord; Central City, Nebr.; I am a farmer and stock breeder, and also deal in grain.

Senator FORAKER. You are a shipper, then?

Mr. HORD. Yes, sir.

The CHAIRMAN. What is the extent of your business? How much do you ship a year, in and out?

Mr. HORD. This year we will have a thousand cars of cattle to go to market, and most of them will be shipped into our various feeding stations. We buy the stock in the various parts of the West—Wyoming, Colorado, Utah, Nevada, and western Nebraska—and ship them down into Nebraska and fatten them and then send them down to the Chicago market.

The CHAIRMAN. You wish to make a statement in regard to the question under investigation before the committee?

Mr. HORD. Yes, sir.

The CHAIRMAN. Just proceed, then, in your own way, making your statement, as a shipper, as to whether you think there is any need of legislation or whether you favor the bill known as the "Esch-Townsend bill" or any other bill.

Mr. HORD. As far as my experience goes, in my business, the present conditions are very satisfactory to me. We get along nicely with the railroads, and they give us good service and make reasonable rates. We very much prefer to have them to deal with, to have the officials conveniently located, as they are now, at Omaha. If we want anything that is in reason, any little changes, we most always get

them, and we always feel as though if things were changed we could not get those.

Senator FORAKER. You get little things like rebates once in a while?

Mr. HORD. No, sir; we get no rebates.

The CHAIRMAN. Have you any reason to complain of excessive rates? Are the rates too high in your business or in your section of the country? Do you hear any complaints of excessive rates?

Mr. HORD. No, sir; we think they are fair. Of course, we take into account that it costs more to build and maintain a railroad than it used to, and it is no more than right that they should have a fair return.

The CHAIRMAN. But you would take a lower rate if you could get it?

Mr. HORD. Why, I am human.

Senator FORAKER. Can you tell us of any discriminations against you or anybody else or any locality out in your part of the country?

Mr. HORD. No, sir; not that I know of. We pay the same rate that everybody else does that I know of.

Senator CULLOM. How much of a city do you live in?

Mr. HORD. Two thousand people.

Senator CULLOM. Is everybody there satisfied with the railroads?

Mr. HORD. That is a pretty hard question to answer. I do not know of anybody not being satisfied.

Senator FORAKER. What roads are you on?

Mr. HORD. The Union Pacific and the Chicago, Burlington and Quincy.

Senator FORAKER. Do you handle any cattle that come up from down in the southwestern part of the country?

Mr. HORD. Yes, sir.

Senator FORAKER. We have been told that there is a great deal of dissatisfaction with cattle shippers from that part of the country; that rates are regarded as too high. What is your experience about that?

Mr. HORD. Well, some people would grumble to be hung. They are not excessive with other freights, I think.

Senator FORAKER. As compared with other commodities?

Mr. HORD. I do not think so.

Senator FORAKER. In shipping freight down in that part of the country, do you ever unload your cattle to feed them? Give us some idea of what is involved in shipping live stock.

Mr. HORD. Sometimes we have bought cattle in Texas, and we usually unload them at Denver or Trinidad, or some of those stations, and feed and water them, and reload them and ship them on home. I also have a ranch in western Nebraska, in Thomas County, and I buy cattle at Denver and ship them there and raise them a year and then bring them down onto our feeding station.

Senator FORAKER. Have you bought any cattle down in Texas?

Mr. HORD. Yes, sir.

Senator FORAKER. And in Arkansas?

Mr. HORD. Not in Arkansas; no, sir.

Senator FORAKER. Do you have any complaint to make of the rates on cattle shipped out of Texas into your part of the country?

Mr. HORD. No, sir; they always have made us what we call a "stock cattle rate," which is a very reasonable one.

Senator FORAKER. The rates on cattle have been advanced, have they not, especially out of that part of the country?

Mr. HORD. Yes, sir. I do not know just how much. I have not bought any from that territory this year.

Senator FORAKER. Have they been advanced in your particular territory?

Mr. HORD. A little; not much.

The CHAIRMAN. How much of an advance has there been?

Mr. HORD. There have been tariffs where we got as low as 27½ cents from our place to Chicago, a few years ago.

Senator FORAKER. Twenty-seven and one-half cents a hundred from your place to Chicago?

Mr. HORD. Yes, sir.

Senator FORAKER. I am speaking about tariff rates from down in the Southwest up to your country.

Mr. HORD. I do not know very much about that. There has been no advance that I know of into the northwest territory.

Senator FORAKER. What is the rate from your place to Chicago at this time?

Mr. HORD. Well, the local rate is 32 cents a hundred.

Senator FORAKER. So there is an advance of 5 cents a hundred?

Mr. HORD. Four and one-half cents.

Senator FORAKER. When was the advance made?

Mr. HORD. Two years ago.

Senator FORAKER. And that is accepted by everybody without complaint, I understand you to say?

Mr. HORD. I think so.

Senator FORAKER. Have you any complaint of any kind to make?

Mr. HORD. No, sir.

Senator FORAKER. How did you happen to come here?

Mr. HORD. Well, I was asked to come here by a friend, because I believed that it was right.

Senator FORAKER. Are you interested in any way in the railroads?

Mr. HORD. No, sir.

Senator FORAKER. You are just a shipper?

Mr. HORD. A shipper; yes, sir.

Senator FORAKER. I believe that is all.

STATEMENT OF MR. J. W. COOPER.

The CHAIRMAN. State your name, residence, and occupation.

Mr. COOPER. J. W. Cooper; St. Paul, Minn.; I am a manufacturer of food products, and a wholesale grocer.

The CHAIRMAN. Are you a large shipper?

Mr. COOPER. Quite a large shipper, yes, sir.

The CHAIRMAN. Proceed with your statement.

Mr. COOPER. In view of the examination of the witness yesterday, I hate to make a statement, as you know that ordinary business men are not competent for this kind of work; are not used to making public statements. However, I feel an interest in this matter, because it has an effect upon my business.

Senator CULLOM. What is your business? I did not hear.

Mr. COOPER. Manufacturer of food products and wholesale grocer. To get the subject of what I have to say clearly before you, I want

to state that I went into Minnesota in the beginning of things in Minnesota, in the early sixties. I went into that State on a stage-coach, because at that time of the year it was the only method of getting into our State. I have remained in that State since that time. We had only a few miles of railroad operating within the State, and a general impression that west of us was a barren country that never could be populated. We had also in our midst Mr. Hill, who had a clear insight, or a prophetic vision of the future to a greater extent than we had, and he believed that the prairie west of us could be populated and settled; and it is to his foresight largely that the early development of the State took place. The younger men, who were of his age at that time, took some of his spirit, and we became interested in the problems of the distribution of the products of our State, I among the number. Now, we have grown up together. The interests of the merchants have been the same as those of the railroads, and we have kept pace side by side, solving the problem that had to be solved. I speak of this because it was the natural forces that were put in operation there to produce the result that we produced; and those natural forces are open to us as they were then. We asked for no Government aid, and none was given. I am not here to-day to ask for anything. We do not want anything, because we have shown our ability to take care of ourselves. The railroad problems we have not all agreed upon, but we have so far agreed that we have brought prosperity to ourselves, and, I believe, prosperity to the railroads.

We must remember that in these forty years there has been a great development in Minnesota. Take it from the time forty years ago to the present, and perhaps it is the history of the great progress of the whole country, the railroad building of the whole country, in which all have prospered.

The question that is before us, or under discussion, is whether or not we shall take the power from these forces that have been working with us for the development of our State and our business, and confer the power upon some other unknown force. We believe that the present law in its operations gives us all the protection we are entitled to. We can go to the court if we are wronged and get redress. We believe that is all that we ought to ask, and I, for one—and I believe when I speak for myself that I speak for the large business interests of our State, although I do not represent them—am firm in my conviction that, while we have prospered under the conditions and with the forces which have been in operation, we ought not to make an experiment and go into the unseen and untried.

Senator CULLOM. You understand, do you, that the chief purpose of the proposed legislation that is talked about is to add to the laws that exist which give the Commission power to determine whether any given rate is reasonable by giving them the additional power to say, if in their judgment it is not reasonable, what rate would be reasonable? Do you think that is a dangerous power to give?

Mr. COOPER. I do, sir; and I do for the reason that I can not conceive that the rate-making power can be given to any commission as now organized or that may be organized under the laws that Congress may give it that will not result in a distance tariff or a zone tariff. That, I believe, will so far affect business interests as to be injurious to my business and to the business of a great many others.

Up to a certain point the business men of the country bought transportation as they bought sugar. My business is to buy transportation, to buy merchandise, combine the transportation that I buy with the merchandise that I buy and the labor that I perform on it, and sell it. Now, it is the difference between one and the other, that little difference, that I am interested in. It is not a question whether the rates are higher or lower. It is a question whether the rates are relatively right, whether my competitor who is serving the same community that I serve is upon a fair competitive basis with myself. That is the question we are interested in. From what I have seen of the evidence given here and of the statements that I have read concerning it, I can not see any interest represented here except those who are interested in this problem in a peculiar way. What have we heard? Have we heard from the great masses of the people who are not here, those who are interested in the production of the article that is transported or who consume the article transported? I fail to have seen it. The Milwaukee Chamber of Commerce comes here through its representative and says that the grain rates are not right. But who is he? He is a commission man. How can he be interested in rates? He buys and he sells. It is the man who produces the grain that we are interested in, and I understand that you gentlemen are here to look after the interests of the whole people, the large masses of the people. I can take care of myself. I do not ask you to help me, and I think the railroads have shown this morning that they are able to take care of themselves. What is it that we are trying to aid? Is it the great mass of people that we are trying to help? If it is, it seems to me we are getting away from it.

Senator FORAKER. What is the aggregate amount of your business?

Mr. COOPER. In tons?

Senator FORAKER. In dollars and in tons also.

Mr. COOPER. Well, I should think, without knowing exactly, perhaps a hundred thousand tons, and in volume $4,000,000 or a little more.

Senator FORAKER. That you do annually?

Mr. COOPER. Yes, sir.

Senator FORAKER. Where do you sell?

Mr. COOPER. We sell in Wisconsin, and we come in competition with the gentleman who was here yesterday, Governor Cummins. We also sell in Minnesota, North and South Dakota, northern Michigan, Montana, some in Washington, a little in Idaho, and that is about the limit—about 2,000 miles from our territory.

Senator CULLOM. It is altogether in the West?

Mr. COOPER. Yes, sir.

Senator CLAPP. How far-reaching is the freight problem with you in getting the raw material?

Mr. COOPER. Well, I was just going to state, Senator, that we are also large importers. To that extent we are greatly interested in the import rates. You will recall that there is some discussion about the import rates?

Senator FORAKER. Yes.

Mr. COOPER. If you restrict the present method of making import rates you will centralize the import business on the eastern borders of our continent very largely. The present method decentralizes that business, and we are able to buy the products of Japan and sell them.

We import also from Spain, some from England, some from Italy, and some from France, on rates to St. Paul that are substantially less than the ocean rate to New York plus the rate made from New York to St. Paul, so that we are able to distribute those products against New York directly, on a fair competitive basis.

Senator FORAKER. That is to say, you get a low through rate?

Mr. COOPER. Yes, sir.

Senator FORAKER. Which enables you to import from abroad and then sell in competition with New York and other places?

Mr. COOPER. Yes, sir.

Senator FORAKER. And that is the system you refer to when you say the present system decentralizes?

Mr. COOPER. Yes, sir. I was much impressed with a statement I took from a paper—I do not know what the paper is now—in reference to the statement made by our President, whom we all love and respect, in which he says:

> When you give a nation that power, remember that harm and not good will come from the giving unless you give it with a firm determination not only to get justice for yourselves, but to do justice to others.

Analyzing the situation, we have nothing to complain of, practically. From all the evidence I have heard here we are pretty well satisfied with the present conditions of the country; pretty well satisfied with the result of the rates as now made.

Senator CULLOM. Are your people well satisfied—the farmers and producers?

Mr. COOPER. I was going to speak of that, Senator.

Senator CULLOM. Yes.

Mr. COOPER. When we started at the beginning of things farm lands in our State were worth $1 to $1.25 an acre. Under the method of developing our State they are worth within 400 miles of a railroad $50 an acre. They have good horses; they have good schools, good roads, good bridges, and they are the most prosperous people that I know of. That is the best evidence I have that they are pretty well satisfied with conditions as they are.

Senator FORAKER. They have good horses and good buggies?

Mr. COOPER. Yes. Their banks are full of money; their children are well clothed. We develop some politicians, with our good men, who—well, I think it generates largely from what we see in the paper of what Mr. Lawson says, and men of his class. When they see a millionaire go by with his ten-thousand-dollar automobile they say: "I think that has been taken out of me, part of it. It belongs to me."

Our State is represented here by prayers from our legislature and by our commercial bodies in reference to this matter. Our State has been a little unfortunate, perhaps, in its representation here——

Senator CULLOM. It has been very fortunate so far as this committee is concerned.

Mr. COOPER. I am not speaking of this committee, Senator, but of the papers that have been sent before you. The legislature that gave expression to the views were not elected upon the question of whether or not the rate-making power should be given to any one individual or to any committee, and through political influence very likely that action was taken. But do they represent the shipping in-

terests of Minnesota? Do they represent what the farmers want concerning this? I do not believe they do. They are entitled to fair consideration.

I will state a little bit further. There is a prayer here from one of our commercial organizations, and I will relate just what the business of the different persons who signed this prayer is. The first one is a man who is interested in hay and grain—purely local. Another one is an attorney. He has no business but that of an attorney. I presume he is a large shipper, and, of course, is entitled to a hearing. Another one is an advertising agent. He is not a large shipper. He is not a producer of anything, but he takes what others produce and gets a living out of it. Another one is superintendent of delivery of our Post-Office Department—a postal employee. He certainly is a large shipper and his views ought to have weight before you. Another is a lumber broker. He is entitled to a hearing, of course; but he is not interested in the question of rates. It is a question between two rates that he is interested in. Another is a jobber of saddlery. Another is a feed man. Another is a publisher of a weekly paper--it is spelled "w-e-a-k-l-y" here; I guess that is right. I think Senator Clapp knows who I mean. Another is the publisher of a directory. Another is a commission broker. Another is a salesman for a music house. Another is a fireman and engineer. Another is an attorney. Another is a teacher in a high school. A cigar manufacturer. Another is put down as a politician, with an initial after his name; I do not know what it means, but I presume he is all right. Another is a clerk, and another is an attorney, etc.

The CHAIRMAN. What are you reading from?

Mr. COOPER. It is a prayer from a committee of one of our commercial bodies.

The CHAIRMAN. From an organization?

Mr. COOPER. Yes, sir.

Senator CULLOM. Petitioning legislation?

Mr. COOPER. Yes; that the rate-making power should be given to some commission.

Senator FORAKER. Is that a fair sample of the petitions sent here from Minnesota?

Mr. COOPER. I do not know of any others. This one I know, and I can speak of only the things I know about. I mean to say that I do not think you want to give undue weight to these petitions and prayers until you can hear from the man behind the plow. He is the man we are all interested in. You ask why I am here——

Senator FORAKER. First, to whom did you refer when you spoke of the representation here of your State, which, you said, was unfortunate?

Mr. COOPER. I referred to the prayers that are before you—I mean these papers.

The CHAIRMAN. The petitions?

Mr. COOPER. Yes.

Senator FORAKER. You spoke about newspapers in that connection.

Mr. COOPER. I was speaking of the persons who are a part of this committee who are responsible for the papers that are before you.

Senator CULLOM. Let us see what you are for and how you happen to be here.

Mr. COOPER. I am here because I believe that in the adjustment of rates it would be a necessary consequence or result of giving the rate-making power to a commission that it would be destructive of industry or injurious to the industry that I have created to a certain extent by own energy, together with the energy of others. That is why I am here. And I believe it will result in a distance tariff, in other words, or some such adjustment of rates; and we are very well satisfied with the position that we occupy as to rates. I am familiar with the rates in the territory, to a certain extent, because it is part of my business to buy and sell commodities, the rate of which is a part of that commodity. The very fact that we distribute goods in the territory is evidence that the rates have been fairly satisfactory, and the very fact that the volume of business has reached what it has indicates that I have not suffered to any great extent by the conditions existing.

Now, let us alone. That is all we ask for. Do not inject anything new and unknown into the situation.

Senator FORAKER. What about rebates? Can you tell us anything on that point?

Mr. COOPER. I do not know about a rebate of any character being given at the present time.

Senator FORAKER. How long since that practice has been discontinued?

Mr. COOPER. I do not know of anything of that kind in the last two or three years.

Senator CULLOM. Did you formerly get them, before the Elkins law was passed, for instance?

Mr. COOPER. As I said at the start, we all bought our traffic as we could in the market, as we buy our transportation now for the foreign products.

Senator CULLOM. The governor of Iowa on yesterday seemed to feel that Iowa was getting a little the worst of it in its trade with Minnesota.

Mr. COOPER. Yes, sir. Why did you not ask him, Senator, what effect the distance tariff of Iowa had upon the distribution of its products? I think if he had answered that question fairly, he would have said: "The rates in Iowa apply to all articles made within our State going out on the distance basis until they get to the border of the State. Then they take the rate, whatever it may be."

Another point which he did not answer, which he might have answered, was this: The rates to St. Paul—and that is one of the operations of the law by which we suffered to a certain extent at the time—can not be higher at intermediate points than at the terminals; so that if the first-class rate from Chicago to St. Paul is 60 cents on first-class freight, and any point in Iowa is intermediate, it can not take a less rate, or can not take a higher rate—so that we have the drawing down of all those rates between Chicago and St. Paul or intermediate points to the St. Paul rate. Of course that may affect, and does affect, doubtless, the distribution of freights out of Iowa.

Senator FORAKER. You do not want anything done? You wish things to be left as they are?

Mr. COOPER. We want to be let alone. We can take care of ourselves.

Senator KEAN. You are satisfied with the existing law, as it is?

Mr. COOPER. Yes, sir.

Thereupon the committee took its usual noon recess.

AFTER RECESS.

STATEMENT OF MR. PETER JANSEN.

The CHAIRMAN. Please state your name, residence, and occupation.

Mr. JANSEN. My name is Peter Jansen; Jansen, Nebr. I am a farmer and feeder.

The CHAIRMAN. What is the extent of your business?

Mr. JANSEN. I feed from 15,000 to 20,000 sheep every year, and ship about 150 cars.

The CHAIRMAN. One hundred and fifty cars a week, or a year?

Mr. JANSEN. One hundred and fifty cars a season.

I want to say one word in regard to Mr. Hord; because of his modesty he has not told you all. He is the largest shipper, not only in Nebraska or the United States, but the largest shipper of stock in the world. To my personal knowledge the whole amount of his shipments for this year were 3,850 cars. I say that to show of what importance his testimony is.

So far as I am concerned, I am simply a small shipper. I have lived in Nebraska thirty years, and have always handled sheep. I will make my statement very brief.

I do not find any general necessity for reduction of rates among the western people. I find the demand is for better service, if we could get it. Our service has been rather poor, generally from lack of equipment, etc. But so far as general reduction of rates is concerned I do not think there is any general demand for it.

Anything that would tend to make more red tape between the shippers and the railways would be detrimental to public interests.

I have read this bill since I came to Washington, and, as I understand it, if the power of rate making was given to the Commission it might give the railroads a pretext for not adjusting rates. They might say, "Lay your case before the Interstate Commerce Commission," and the Commission might take a long time to get things adjusted. The closer the shipper and the railway traffic managers get together the better off we are. I have always found it so.

Permit me to illustrate that. About a year ago I was at Springer, N. Mex., and bought two train loads of sheep. I went to the Santa Fe agent to make arrangements for shipping them, and he said he had no traffic arrangement with the Rock Island and could not haul their cars. I said, "If that is the case, I will take these sheep down 150 miles to the Rock Island." The country is open, and I would take them to that railroad, and they have a traffic arrangement with the Rock Island. He says, "Hold on, we will see about that." It was not twenty-four hours before he had a traffic arrangement with the Rock Island, and they published a rate for ten days just to get my shipment. If we had had to come to Washington for an adjustment, my sheep would probably still be grazing in New Mexico. Therefore I say that the closer we can get to the traffic managers of the railroads the better off we are.

As I said before, we would like better service, if possible. Lack of better service is what has been bothering us shippers.

I take issue with Governor Cummins in regard to foreign rates. He said yesterday that our rates would not be measured by the foreign rates. I think that is wrong. We measure a great many things by foreign standards, and I had occasion to see recently, when I was abroad, that not only do we get lower freight rates than in any other country, but we get better service, better cars and equipments.

As I said before, I believe that to confer this additional power on the Interstate Commerce Commission would probably give the railroads a valid excuse for not adjusting rates. Anything that would tend to make the negotiations between the shipper and the railway more difficult would be harmful.

As a rule, we shippers find that the railroads try to treat us middling fair. Of course, once in a while we have a just complaint against the railroads, but they generally try to transact our business fairly. I have found that to be true in my thirty-two years' experience with them. I told you about my experience in New Mexico.

I am a great believer in the inexorable laws of supply and demand, and I think that the less legislation the country has the better off it is.

I think the railroads will need a great deal of revenue in the next few years for betterments, additional yardings, and side tracks, but I do not think a horizontal reduction of rates would be for the betterment of the country or of the shipper.

There has been a good deal said about the southwestern cattlemen complaining. I have been all through that country and I know that those fellows are grazing cattle and sheep on Government land, on free ranches, and they are certainly doing less shipping than many others. They ship very few sheep and very few cattle to market, and they do not go to Chicago. They sell them to Mr. Hord, who feeds them. I think there is more hue and cry than anything else in these complaints against the railroads.

I have a memorandum of the different rates we have been paying, but I suppose that is not essential.

Senator FORAKER. Yes; put that in.

Mr. JANSEN. It is simply a memorandum of the rates we have been paying from a certain place—from Jansen, N. Mex., the flat rate is 13 cents a hundred.

Senator FORAKER. How many miles?

Mr. JANSEN. One hundred and nine miles. The rate from Jansen to Chicago is 33½ cents.

Senator FORAKER. How many miles is that?

Mr. JANSEN. That would be about 450 miles, for a rough guess. Then we have a feed-in-transit rate by which we are charged 7 cents additional for taking off these sheep at any place and feeding them, up to six months. The railroad charges that for the extra trouble of loading and unloading and sending out their crews to take them when they are ready. The maximum of a car is 2,200 pounds.

Senator FORAKER. What you mean is that the railroads have the privilege of loading them back on the car at any time within six months?

Mr. JANSEN. The shipper has.

Senator KEAN. On payment of 7 cents extra?

Mr. JANSEN. Yes, sir.

Senator FORAKER. You are not complaining of rates, as I understand?

Mr. JANSEN. No.

Senator FORAKER. Please tell us particularly about rates from the southwestern country—Texas, Arkansas, and Oklahoma.

Mr. JANSEN. I think Arkansas is a very limited shipper.

Senator FORAKER. I suppose so.

Mr. JANSEN. I have shipped from New Mexico, and have made some shipments from Texas, but very few. I did not find the rates excessive in New Mexico. I could not find the rate from Oklahoma and Texas, but I think it was 37 cents.

Senator FORAKER. Did you hear any of these complaints until after this hearing was begun in Washington?

Mr. JANSEN. No; I was in New Mexico last fall, but I did not hear of any complaints.

Senator FORAKER. How much of a shipper are you?

Mr. JANSEN. I said from 150 to 200 cars of sheep a year.

Senator CULLOM. You live where?

Mr. JANSEN. Near Jansen, Nebr.

Senator CULLOM. A town named for you?

Mr. JANSEN. Yes.

Senator CULLOM. Four hundred to 500 miles from Chicago?

Mr. JANSEN. Yes.

Senator CULLOM. Is your region pretty well settled?

Mr. JANSEN. Oh, yes; thickly settled, Senator.

Senator CULLOM. Have you taken any pains to find out what the sentiment of the people in your country is in reference to this general subject?

Mr. JANSEN. Yes.

Senator CULLOM. What is it?

Mr. JANSEN. When I left home several of my friends came to the station to see me off, and they said: "We wish things were left alone." That seemed to be the general sentiment.

Senator CULLOM. That seems to be the public judgment.

Senator FORAKER. That might be due to the fact that Nebraska is being discriminated in favor of as against Iowa.

Mr. JANSEN. I think Governor Cummins said that might be so, but we do not think so.

Senator CULLOM. You do not know that you are getting any favors that are extended to everybody else?

Mr. JANSEN. No; I do not think we do.

Senator FORAKER. What about rebates?

Mr. JANSEN. I have never had any rebates since about twenty years ago. Then I used to get rebates.

Senator CULLOM. That was before the original act was passed?

Mr. JANSEN. Yes. I never saw one since.

Senator CULLOM. And you do not know of anybody else getting rebates?

Mr. JANSEN. No, sir; I do not.

Senator CULLOM. What do you suppose is the cause of this general excitement that seems to prevail in the country to some extent?

Mr. JANSEN. I think a good deal of it is political, "playing to the galleries." Of course I am not a politician, but that is the way I size it up.

STATEMENT OF MR. C. D. MITCHELL.

The CHAIRMAN. State your name, occupation, and residence.

Mr. MITCHELL. My name is C. D. Mitchell; my home is Chattanooga, Tenn., and I am president of the Chattanooga Plow Company. I come here representing the Chattanooga Manufacturers' Association.

The CHAIRMAN. The chamber of commerce?

Mr. MITCHELL. No, sir.

The CHAIRMAN. As the representative of the Chattanooga Manufacturers' Association?

Mr. MITCHELL. Yes, sir.

The CHAIRMAN. To express the views they entertain on the subject we are investigating?

Mr. MITCHELL. Yes, sir. I will say that the Chattanooga Manufacturers' Association is composed of 100 of the largest manufacturers in Chattanooga, and represents, in round numbers, about $30,000,000 invested in manufacturing.

Senator CULLOM. What is the character of the manufactures?

Mr. MITCHELL. In Chattanooga?

Senator CULLOM. Yes.

Mr. MITCHELL. Chattanooga is distinguished in the South for its variety of manufactures. It comprises woodwork institutions, furniture makers, and sawmills; and in iron, it is boiler makers, engine makers, wagon makers, and plow makers. We have really a great variety of manufacturing interests in Chattanooga. The number of manufactures in Chattanooga is something above 300.

The CHAIRMAN. Proceed with your statement you wish to make before the committee on the pending question.

Mr. MITCHELL. As manufacturers, we are best served when we have equitable freight rates that carry our products to their markets on the same basis as our competitors, and when these rates are stable.

Therefore we are interested in two phases, at least, of the pending Esch-Townsend bill.

First. Will it correct the "open secret" railroad evils and abuses, such as "rebates," "private cars," "discriminations," etc.?

Second. Will the putting of "rate making" in the hands of the Government or its authorized Commissioners be better for us than the present competitive system?

In answer to the first, it would seem to us that this bill but vaguely touches these carrier evils in which we are most concerned, and that their correction under existing law is rather from nonenforcement of the law than the fault of the law itself.

The second question, that of "rate making," is of vastly more importance to us, because its effects will be general, while the evils mentioned, bad as they are, are not universal, but special.

We must believe that a field so large as this, considering our varied country, its varied interests, and the immense railroad mileage, is too large a task for this or any sized commission to perform.

Their work would lack elasticity and be rigid to the extent of producing stagnation, if not paralysis.

They could regulate but a portion of traffic at a time, or a section of the country at a time, and that would bring great loss or disaster to shippers in other sections, or to traffic not in line with the changed conditions. Judged by the work of the Interstate Commerce Commission in the past, "life is too short" to wait for freight adjustment at their hands, and we can see no reason why, by adding two more members to their number and a hundredfold to their labors, greater speed can be expected in their work.

Under the present competitive system the transportation lines, through whom we receive redress, or changes of tariffs, or classifications meet often and are interested in our welfare and the growth and prosperity of the country in which they operate. It is but fair to say that the relations between the shippers and the carriers are steadily, if slowly, growing more friendly because of the recognition of mutuality of interests.

It is but natural that the railway lines, operating in either of the three grand divisions of railway service (the trunk, the western, and the southeastern), should do all they can to foster and protect the interests of the section they derive their revenue from. In our judgment, this is the best safeguard we can have. While it has not, or may not for a long time to come, give us all we feel is just to us as individuals, and while it has not or may not give us a perfect transportation system, still we must think it preferable to governmental paternalism, which is subject to change and political influences.

We in the South, where industrial development is new and perhaps more crude than in older sections, no doubt need more than elsewhere quick action and the personal work that grows out of the present competitive railway system. Our sparse population and different natural conditions require the most intelligent and sympathetic action in getting us supplies and in distributing our products.

Senator CULLOM. Do you understand that there is any proposition in any bill authorizing or requiring the Commission to make all the rates of the country?

Mr. MITCHELL. Not directly; no, sir. But in my experience in getting reductions I find that where I can secure a change, especially at a dividing point, I find that that does affect many other rates, affecting different parts of the country.

Senator CULLOM. Do you understand that any law that is proposed to be passed would prevent you from settling a question between yourself and a railroad, or between your community and a railroad, whatever railroad it might be?

Mr. MITCHELL. No; not directly. But I do understand that it might very greatly hinder me in getting an adjustment.

Senator CULLOM. How would it hinder? This proposition is where you, for instance, call upon the Commission to complain that the railroad is not treating you fairly; you ask the Commission to come and see whether that is correct or not, and they come and determine that the railroad is not treating you fairly, and the Commission says what fair treatment would be. That would not be against your interests, would it?

Mr. MITCHELL. No, sir; I do not see that that would be against

my interest, barring the fact that my experience is that it would require a great deal longer time for me to get that decision from the Interstate Commerce Commission than it usually does to get a settlement by sitting down and personally talking the matter out with the parties in interest.

Senator CULLOM. You can do that before you ask the Commission to come.

Mr. MITCHELL. That is what I usually do.

Senator CULLOM. This proposed legislation would not interfere with that at all.

Mr. MITCHELL. But the railroad official would probably say to me, "Mr. Mitchell, there is a tribunal in Washington that will settle that question, and perhaps you had better seek redress there."

Senator CULLOM. Instead of that, the Commission would go to your place and say to you, "Now, we want to find out what is the matter here, what is the complaint, what is the contention, and we want to hear from you and everybody else interested." Do you see anything wrong in that?

Mr. MITCHELL. Nothing wrong in that, if they would come in season. But we are afraid, down our way, that their visits might be long between.

Senator CULLOM. You want them very often. Probably you would settle the thing among yourselves, and they would only come probably after you sent for them and possibly be a little late in coming then. I do not know how that would be. According to your suggestions you would not want them to come at all, and they would not come unless you wanted them to.

Mr. MITCHELL. I am frank to say that I, as a shipper, very much prefer to have matters as they are at this time.

Senator CULLOM. To be "let alone" is a very common kind of feeling; to be content rather than to go into a new atmosphere or undertake to do something, so that you would not know exactly where you would come out. But here is the proposition: Instead of simply allowing a commission to come to your town and investigate the conditions existing between your shippers and the railroad, whatever railroad it might be, and finding out that you are being charged too much, and saying that the railroad charge is unreasonable, as you would be contending it would be, there, under the present law, they have to stop. But under the proposed amendment that is talked about in the country the additional step that they take is to say that this rate is unreasonable, if it is, and to substitute for that rate a rate that is a little lower—one that would be reasonable to those people—and make an order for the railroad to change its rate and make it reasonable. Do you see anything wrong in that?

Mr. MITCHELL. On its face, Senator, I do not see anything wrong with it. But somehow experience teaches me that I would prefer, as a shipper, to deal with men who are trained in the business of railroading, who have my interests at heart—my prosperity means their prosperity—and rather than to trust it to a commission, who will be overburdened with work, and who possibly, if not at first, at some time, might not understand the relations of my rate to the relations of everybody else's rate.

Senator CULLOM. The point I am making with you—and I want

your attention to it closely—is that you are not called upon by the Commission or anybody else to send for the Commission unless you want them. You can deal with the railroad for a month or a year or longer, if you desire, and the Commission will not have anything to do about it unless somebody in your locality wants them to come and settle the question whether you are being charged too much or not. You have a right to deal with the railroad and settle the thing in your own way without any interference. The point I am trying to get you to consider is whether, in view of those facts, you think we ought not to give the Commission more power?

Mr. MITCHELL. I understand your question, I think. The point I have in my mind is that the enactment of a law of this kind would to a degree alienate me, as a shipper, from the man that has most interest in my shipping. In other words, he would fall behind the law to cut me out from the direct personal intercourse I have with him to-day and refer me to the tribunal.

Senator CULLOM. If he were to do that he would do just what the railroads of the country think ought not to be done. The railroads think that they do not want this legislation, and I am trying to find out from you, as a shipper, whether, if you understand what the proposition is, you do not want it, either?

Mr. MITCHELL. If I understand the meaning of what you have just said, I come here with the avowed idea in my head that I do not want this legislation.

Senator CULLOM. You do not want it, whatever it may be?

Mr. MITCHELL. That is correct.

Senator CULLOM. You do not want to have any commission to have any power to determine whether a rate that you are paying to a railroad is reasonable or unreasonable; you want to settle that between yourself and the railroad as against all other people?

Mr. MITCHELL. In a way, you are correct. I am better satisfied with the tribunal that I did have than I would be with a tribunal in Washington.

Senator CULLOM. The tribunal would be in Washington or Chattanooga or wherever else it was desired.

Mr. MITCHELL. Yes.

Senator FORAKER. You are satisfied. You do not want the rate-making power conferred upon the Interstate Commerce Commission?

Mr. MITCHELL. That is the way I think on the subject, Senator.

Senator FORAKER. Do you say you represent the 300 manufacturers of Chattanooga in that particular?

Mr. MITCHELL. No, sir; not that I know of. But I do know that I represent 100.

Senator FORAKER. They are the members of the Manufacturers' Association of Chattanooga?

Mr. MITCHELL. Yes, sir. Permit me to say, Mr. Senator, that we have in our Manufacturers' Association at Chattanooga a freight bureau, so that we have given this matter of freights and of classification a little more attention than the ordinary individual gives it—have given it more thought. What I tried to state to you in my way is about the thought we have arrived at.

Senator FORAKER. That is, the freight bureau you have there has

given this subject special investigation and has come to the conclusion that it does not want this proposed rate-making legislation?

Mr. MITCHELL. Yes, sir.

Senator FORAKER. They do not want the present law disturbed?

Mr. MITCHELL. That is correct.

Senator FORAKER. The Senator from Illinois asked you if, in the event of your having a controversy with a railroad, you would not like to have the Interstate Commerce Commission to fall back upon to adjust your differences.

Mr. MITCHELL. We have that already, haven't we, Mr. Senator?

Senator FORAKER. Yes. I was also going to suggest that you have another remedy. Since the Elkins law was passed, two years ago and more, you can go into the United States circuit court and have an immediate hearing of the question, all other business being postponed until you are heard.

Mr. MITCHELL. I want to say that the manufacturers of Chattanooga think a great deal of the Elkins law, and probably love Senator Elkins better because of it.

Senator FORAKER. But he is so much beloved, anyhow. You are satisfied with the law as it now stands?

Mr. MITCHELL. Yes, sir.

Senator FORAKER. I understand you to say that you are not complaining of rates as too high?

Mr. MITCHELL. Why, Mr. Senator, we have got human nature down at Chattanooga just the same as there is everywhere, and I reckon we are eternally kicking on rates.

Senator FORAKER. What I want to know is whether there are any just complaints of extortionate rates or of rates unreasonably high.

Mr. MITCHELL. No, sir.

Senator FORAKER. Is it not true that among business men, who are shippers as you are, the rates are regarded in themselves as reasonable in your part of the country?

Mr. MITCHELL. As fairly reasonable. The question that arises with us is not whether a rate to a certain point is 40 cents or not, but it is the question whether our competitor can get to that point on a less basis than 40 cents.

Senator FORAKER. Your competitor in the same town?

Mr. MITCHELL. In the same town.

Senator FORAKER. If he is in the same town with you he could not get a less rate, unless he were allowed a rebate or something in violation of the act, could he?

Mr. MITCHELL. No, sir.

Senator FORAKER. That reminds me to ask you, What about rebates? Are they being given now as they once were, or not? Or have you any knowledge on the subject?

Mr. MITCHELL. There is no such thing as a rebate given me, and I have no reason to believe that anybody in my section of the country gets rebates.

Senator FORAKER. In other words, then, rebates are practically discontinued under existing law, as I understand?

Mr. MITCHELL. Yes, sir.

Senator FORAKER. Then the only thing remaining is what you have

suggested—whether or not you are being discriminated against as a locality. That you are always interested in?

Mr. MITCHELL. Yes, sir.

Senator FORAKER. That brings up the question of relative rates. Have you any complaint to make in that regard?

Mr. MITCHELL. So far as the outgoing rates from Chattanooga on manufactured products and merchandise are concerned, I have heard no complaint whatever. There are complaints in a mercantile way as to incoming freights, because the city of Nashville is recognized as a river point, being on the Cumberland, and Chattanooga is not recognized as a river point, on the Tennessee. We people down in Chattanooga think we have got a better river than the Cumberland. Therefore if Nashville is entitled to recognition as a river point, Chattanooga is entitled to recognition as a river point, and we are putting a line of boats on the Tennessee River at this time with a view of forcing that recognition from the railroads.

Senator FORAKER. Where does this merchandise come from that you anticipate you will have brought by river to Chattanoga?

Mr. MITCHELL. Principally from the Northeast.

Senator FORAKER. From Cincinnati, Louisville, and Chicago?

Mr. MITCHELL. No; rather from the Northeast, Mr. Senator—from New York, Philadelphia, and that section.

Senator FORAKER. How do they get water transportation from New York and Philadelphia to Nashville?

Mr. MITCHELL. Of course, they would only have water transportation, say, from Pittsburg. But it is the recognition, rather than the fact, that I refer to. Years ago, when railroading was quite a go-as-you-please arrangement, Nashville was recognized as a river point.

Senator FORAKER. I suppose the truth is that goods shipped from New York to Nashville might be routed by way of Pittsburg, take the water at that point, and go by water all the rest of the way?

Mr. MITCHELL. Yes, sir.

Senator FORAKER. And the railroads would either have to meet the water competition or else they would have to abandon that part of the business?

Mr. MITCHELL. Yes, sir.

Senator FORAKER. And that has given Nashville some advantage over Chattanooga, and it is that which Chattanooga complains of?

Mr. MITCHELL. Yes, sir.

Senator FORAKER. Is that the only complaint you know about?

Mr. MITCHELL. That is the only freight sore spot that I know of in Chattanooga.

The CHAIRMAN. As to the adjustment of rates between localities, of which you spoke, you think the railroads can adjust them better and more satisfactorily to the shippers than a commission?

Mr. MITCHELL. I do.

The CHAIRMAN. That is your judgment?

Mr. MITCHELL. Yes, sir.

The CHAIRMAN. And you can better deal with the difficulties that arise between localities?

Mr. MITCHELL. That is the way it seems to me, Mr. Senator.

Senator CULLOM. You are aware that you can resort to three methods, if you want to?

Mr. MITCHELL. Yes, sir.

Senator CULLOM. You can resort to the railroads, or you can resort to the Commission if the railroads are not right, or you can go into court.

Mr. MITCHELL. Yes, sir.

The CHAIRMAN. In speaking of the delay in reaching a conclusion by the Commission, if the Commission could condemn a rate and substitute another, then it would be difficult for the railroads to change that rate without the Commission's consent, and you, as a shipper, would not want the delay of coming to get that consent, would you?

Mr. MITCHELL. No, sir.

The CHAIRMAN. That is the point you suggest. We thank you very much.

Senator FORAKER. Mr. Chairman, I have here the briefs filed before the Interstate Commerce Commission in regard to this differential port question, which the Commission has been considering, and I should like them to go into the record as an appendix.

The CHAIRMAN. By whom were the briefs prepared?

Senator FORAKER. By the attorneys representing the cities of New York, Baltimore, and Philadelphia. The briefs are full of information.

The CHAIRMAN. Have you the decision there?

Senator FORAKER. No; there is no decision in the case yet.

The CHAIRMAN. The decision has not been rendered.

Senator FORAKER. These are the briefs on both sides.

Senator KEAN. Let them be printed as another appendix.

The CHAIRMAN. In a volume to itself.

Senator FORAKER. I would like them printed in a volume to itself.

It was so ordered.

STATEMENT OF MR. L. B. CARLE.

The CHAIRMAN. Mr. Carle, you may make your statement.

Mr. CARLE. Mr. Chairman, I have lived in the town of Janesville, Wis., now for fifty-two years. About the time I went there—the same year, but a few months before—the Chicago and Milwaukee road came from Milwaukee to Janesville. Before it came to Janesville lands were worth $2.50 to $5 an acre. Immediately after the road had got to Janesville lands advanced to $20 and $25 an acre, I think, on account of the railroad being there.

In 1857 I went into business in Janesville, and I have been doing business with the railroads there ever since.

Senator CULLOM. For the railroads?

Mr. CARLE. With the railroads.

Senator CULLOM. What is your business?

Mr. CARLE. My son is in the leaf-tobacco business, and I ship, in that business, from 150 to 200 cars per year. I am also president of the Janesville Machine Company, which ships quite a number of machines every year. But our general manager is here, and he can tell you more about that than I can. I am also president of the Business Men's Association of Janesville.

In that connection I will say that I am somewhat acquainted with the location of industries in the city of Janesville, in which the railroads take a prominent part, and am also familiar with commodity rates.

In the business that I am engaged in—the leaf-tobacco business—we go over the State on the lines of the roads through the State, and they give us what they call concentration rates. Those rates are one-half the regular rates, for the concentration of the tobacco at our warehouses, where we have skilled help to put it up in good shape. The tobacco business in the State of Wisconsin amounts to about $4,000,000 a year—that is, that amount is spent with the farmers. The labor on that account amounts to about half a million. That labor comes into the cities in the winter season and the money is paid to a class of people who need it very much. They make good wages. Girls get from $5 to $10 a week when they become skilled in that labor. That is the commodity rate.

Now, we in Wisconsin for the last three or four years have been a good deal excited over this railroad business. We have an orator in that State who is a very magnetic politician. I do not use the word "politician" in any offensive sense; but he is a pretty good politician. He makes a direct charge that the railroads are corrupting the legislature and filching millions of dollars out of the people in excessive rates.

In answer to that charge I have prepared a paper on behalf of the Business Men's Club that we have in our city. Being equally applicable to the case before you, in my judgment, I should like to read that paper.

The CHAIRMAN. Let it go in the record, and you can comment on it.

Mr. CARLE. There are some things I want to comment on.

The CHAIRMAN. Comment on them, but the paper as a whole goes into the record. You may comment upon any point you want to make.

Mr. CARLE. The comment I want to make is this: A certain gentleman—I will not give the gentleman's name—a member of the present tax commission, who was railroad commissioner from 1887 to 1892, nearly five years—the rate per ton per mile in 1887 being $1.48 and the rate in 1892 being $1.09—in making his report to the legislature used this language:

> There is as much love of justice and the desire to see the right prevail among intelligent railway officials as among any class of men, and any candid discussion will be greatly aided by their familiarity with the subject under consideration.

He also says, referring to complaints against the roads:

> The companies have universally treated these [complaints] matters with fairness and made some adjustment with the complainant, so that not a single complaint has been referred to the attorney-general.

That gentleman has held various offices in the State, appointed by the different governors, and he is to-day holding a very lucrative office at a good salary, appointed by an excellent orator in our State.

Senator CULLOM. Appointed by the governor, you mean?

Mr. CARLE. Yes; that means the governor. To-day he is one of the warmest supporters of the governor there is in the State. Rates have been reduced in that time from $1.48 per ton per mile to 84 cents per ton per mile.

Mr. Rice, commissioner from 1889 to 1902, inclusive, says:

> The railroads of Wisconsin make a report each year to the commissioner, showing the cost of the roads, from the books of the various companies. These

reports are all made under oath, and there is no reason to believe they are not true.

He also says:

It gives me great pleasure to state that, in my opinion, as much progress is being made by the railroads in Wisconsin as in any State, they being as fully equipped to render efficient service and as desirous to accommodate and meet the demands of the public in every way as in any country where railroads are operated.

Governor Hoard was governor from 1889 to 1891, at which time the rate per ton per mile in the State of Wisconsin, on the whole tonnage, was $1.05. He makes this remark in his biennial message:

The railroads of Wisconsin are to be counted as among the foremost factors which have brought the State to its present high development. Fortunately for the best interests of all concerned, there has existed for years a friendly spirit of cooperation between the people and the roads, evolved from economic consideration of their mutual and correlative dependence.

The problem of legislation at the present time, therefore, is not so much for supremacy as for the right of adjustment of the relation between the people and their servants. It has been quite too common in recent years to represent the agricultural element in our population as entertaining hostile sentiments toward the railroads and other corporations and demagogues have sought to commend themselves to the element by advocating legislation of a most radical and destructive character.

The rates then were $1.05; in 1891 and since they are $0.84. Governor Hoard is one of the warmest supporters to-day of Governor LaFollette.

But the point I wanted to make about that is simply this: What has changed their minds? And one of the objections I have to a rate commission to be appointed by the Government is the same influence that I think would change their minds and place them where they are now.

Senator CULLOM. What is the influence?

Mr. CARLE. Political influence. It would not be impossible, but I think it highly improbable, that any commissioner can be appointed under political influence, when the power that appointed him would not, in a great measure, influence him.

Senator CULLOM. The power who first appointed our Interstate Commerce Commission was Grover Cleveland, the then President of the United States, but the Commission has been acting under different Administrations since. I just want to state that fact.

Mr. CARLE. I do not say it would be impossible, but I think it would be improbable. I think all the probabilities would be in favor of his being influenced by the power that appointed him.

As to excessive rates, there are about 48 different corporations doing business in the State of Wisconsin, and I have the commissioner's report here for 1902, showing that but 8 of those roads paid dividends.

Senator FORAKER. Eight out of 48?

Mr. CARLE. Eight out of 48 paid dividends for the business of the year 1901.

Senator CULLOM. Was not that largely the result of State or local legislation?

Mr. CARLE. No; I do not think it was the result of local legislation, but the difference in their income would, in my judgment, make it impossible for any legislation to bear equally upon them. For in-

stance, I think they call it the Northern and Madison, which is a branch of the Illinois Central, was built from Freeport, Ill., to Madison, Wis.; that road in 1901 had 91 miles in operation, and that road in operation that year sunk $19,000 in operating expenses. Reckoning the interest on the bonds at, say, $135,000; taxes at $1,556, would make a total loss to that road of nearly $157,000 in operation for that year.

The Wisconsin Central Railroad that year, with a stock of $30,000,000 and bonded debt of $26,000,000, making an investment of $56,000,000, report the cost of their road and equipment as $53,000,000. They paid no dividends in 1902, but credited the profit and loss account for 1901 with $355,114, which is less than one-tenth of 7 per cent.

Now, we have two very prosperous roads in the State of Wisconsin. Their stock, I think, is as high as any stock in this country, namely, the Chicago, Milwaukee and St. Paul and the Chicago and Northwestern. Let us analyze their business for the year to see if they are "filching millions" from the people.

The Northwestern road, with a total income for the year ending June 30, 1902, less operating expenses, was $19,553,000, applied as follows: Interest on funded debt, $7,265,616, about 4¾ per cent; rent, tracks, yards, and terminals, $32,264; taxes, $1,412,865; sinking fund, $225,000; interest paid in advance, $9,195; guaranteed interest, $15,815; construction expenses, $4,697,555; dividends of 8 per cent on preferred and 7 per cent on common stock, $4,529,468. Now, that looks like a pretty large dividend, but let me call your attention to this: They are only stocked for $66,000,000, with $154,000,000 indebtedness; with a small volume of stock and a large volume of indebtedness, they have made a little profit on the property that they were in debt for, which would make a fair profit on their stock.

I have made a comparison, to bring it down to where we can understand the matter. Suppose John Jones, a farmer, owns a farm clear, which is worth $6,600. He buys the farm adjoining it for $15,400. These are the proportions of stock and bonds for the Chicago and Milwaukee road. If John Jones should clear $227 on that $15,400 of indebtedness, over and above the interest, would that be excessive, after paying 8 per cent on the original farm?

Take the Duluth, South Shore and Atlantic Railroad. Their report for the year ending June 30, 1902, shows a debit of $1,936,566 to profit and loss, showing conclusively a heavy loss in the operation of the road.

The Chicago, Milwaukee and St. Paul reports for the year ending June 30, 1902, 6,603.85 miles of road in 8 States, costing $228,731,116, represented in—stock, $104,886,300, and funded debt, $124,796,500; gross earnings for the year ending June 30, 1902, $45,613,124; income from other sources, $434,314, making a gross income of $46,047,439, applied as follows: Operating expenses, including taxes, $30,196,895; interest paid on funded debt, $6,210,086; dividends for year, about 6¼ per cent, $6,584,619; placed to surplus account, $3,055,839, which is about $1,000,000 more than is placed to surplus in 1901. In other words, they got 6¼ per cent dividends on their stock, and made 2½ per cent profit over and above the interest paid on the part of the road on which they owed $124,000,000 of bonded

indebtedness, which is about one-fortieth of their indebtedness. Would any farmer, after forty years, paying for an additional farm have thought that an excessive profit? I do not believe he would.

Finally, I want to say this: I do not believe there is any need of a government doing anything more than they are doing. I think the shippers are protected now under the present law. Rebates are all stopped, and they ought to be stopped; it is but just and right.

I think that the Interstate Commerce Commission now has the power to protect the shipper when he applies to it or applies to the courts.

Further than that, I think a great deal of this excitement and talk about this matter is created by politicians and newspapers of the Chicago American-Hearst type; that there is more wind to it than there is real damage.

I thank you, gentlemen.

The CHAIRMAN. Thank you very much.

Following is the paper referred to above by Mr. Carle:

All railroad charters granted in the State of Wisconsin are based upon the proposition that charges for service shall be just and reasonable, and that there shall be no unjust discrimination in favor of any person, firm, corporation, city, or locality.

The people elect, biennially, a railroad commissioner, whose duty it is to inquire into and report the condition and management and ascertain and examine the pecuniary condition and manner of management of all railroad corporations doing business in the State. These reports are published and are very complete, showing cost of construction, amount of stock, bonded indebtedness, detailed statements of receipts and expenses of operation, amount of interest paid on indebtedness, amount paid for dividends, and a general balance sheet showing the financial condition of each road.

Mr. N. P. Haugen, a member of the present tax commission, was the railroad commissioner for nearly five years. In one of his biennial reports he says:

"There is as much love of justice and the desire to see the right prevail among intelligent railway officials as among any class of men, and any candid discussion will be greatly aided by their familiarity with the subject under consideration."

He also says, referring to complaints against the roads:

"The companies have universally treated these [complaints] matters with fairness and made some adjustment with the complainant, so that not a single complaint has been referred to the attorney-general."

Mr. Rice, commissioner from 1899 to 1902, inclusive, says:

"The railroads of Wisconsin make a report each year to the commissioner, showing the cost of the roads, from the books of the various companies. These reports are all made under oath, and there is no reason to believe they are not true."

He also says:

"It gives me great pleasure to state that, in my opinion, as much progress is being made by the railroads in Wisconsin as in any State, they being as fully equipped to render efficient service and as desirious to accommodate and meet the demands of the public in every way as in any country where railroads are operated."

Governor Hoard, in his biennial message, says:

"The railroads of Wisconsin are to be counted as among the foremost factors which have brought the State to its present high development. Fortunately for the best interest of all concerned, there has existed for years a friendly spirit of cooperation between the people and the roads, evolved from economic consideration of their mutual and correlative dependence.

"The problem of legislation at the present time, therefore, is not so much for supremacy as for the right of adjustment of the relation between the people and their servants. It has been quite too common in recent years to represent the agricultural element in our population as entertaining hostile sentiments toward railroads and other corporations, and demagogues have sought to com-

mend themselves to that element by advocating legislation of a most radical and destructive character."

Governor La Follette, in his message of 1901, referring to the railroad companies of the State, says:

"It is but just to state in this connection that, as appears by the above tables, the railway companies have been fairer than the average of individuals, who as to the great mass of personal property assess themselves."

The tables referred to by the governor were prepared by the commissioner of statistics who, the governor states, carefully investigated the subject and worked out his conclusions, and at the governor's request had reexamined and extended his work, confirming the tables as correct.

The advocates for additional legislation to regulate freight rates in Wisconsin claim the railroad corporations are corrupting our legislature and filching millions of dollars annually from the people in excessive charges.

To support this claim they compare mileage rates in Wisconsin with mileage rates in Iowa on some commodities, omitting to state the commodities that rates are lower in Wisconsin than in Iowa.

It is not strange that the rate on the same commodity should vary in different States. Local conditions, such as competition of parallel lines, or a shorter haul, cost of production of the commodity may warrant this, and rates made under these conditions are not necessarily a standard "just and reasonable rate" for any other State. The fundamental idea is that no rate on any commodity shall be excessive.

Under the present laws the railroad commissioner has ample authority to protect the people against excessive rates.

In 1899 the secretary of the freight bureau of the Chamber of Commerce of Milwaukee complained formally to the commissioner (Mr. Rice) that the Chicago, Milwaukee and St. Paul and Northwestern roads were demanding and receiving excessive freights for the transportation of grain to Milwaukee.

After investigating the matter, the commissioner issued an order directing the companies to promulgate tariffs on grain from about 200 stations in Wisconsin to Milwaukee, reducing the rate from one-half to 3 cents per 100 pounds. The companies promptly complied and published and put into operation the new rates.

The commissioner's report for 1902 shows that the Chicago, Milwaukee and St. Paul road's receipts for freight per ton per mile, over their entire line, have declined from 2½ cents per ton per mile in 1873 to 0.84 of a cent per ton per mile in 1902.

The commissioners of Iowa report for 1902 that the average rate per ton per mile of the 35 roads doing business in that State was 0.872 of a cent per ton per mile for their entire lines; that the freight earnings of the Chicago, Milwaukee and St. Paul and Northwestern companies was about one-third of the total freight earnings of Iowa, and that the receipts of the Chicago, Milwaukee and St. Paul Company was 0.84 of a cent and the Northwestern 0.824 of a cent per ton per mile.

Iowa has about the same area as Wisconsin, more population, and a bountiful supply of coal. She has about three times as many acres of improved farming lands, and, by the census reports, produces about $110,000,000 more agricultural products than Wisconsin.

The increase of the cheese, butter, and condensed-milk industry in Iowa from 1890 to 1900 was about 50 per cent, while in Wisconsin the increase for the same time was about 190 per cent, and the value of the products of the dairy industry in Wisconsin in 1900 was 27 per cent greater than in Iowa. Flour and grist mill products of Wisconsin in 1900 were about $26,000,000—nearly twice what they were in Iowa. The amount of capital invested in manufacturing plants in Wisconsin in 1900 was about $230,000,000 more than in Iowa, and the value of the products of manufacturing plants for 1900 was $196,000,000 more.

About 45 per cent of the tonnage of freight originating in Iowa is the product of agriculture, and animals.

Commissioner Rice, of Wisconsin, reports 28 roads as carrying 28,751,526 tons of freight in Wisconsin for the year ending June 30, 1900, about 20 per cent of which was agricultural products, and about 80 per cent products of mines, lumber, forests, manufactures, etc.

In an abstract of commodities waybilled from Wisconsin by the Chicago, Milwaukee and St. Paul Railway for the year 1901, and published in the commissioner's report of the same year, we find the per cent of all agricultural

products, including flour and packing-house products, to be about 17 per cent of the gross tonnage; that grain was 7.7 per cent; wines, liquors, and beer was 8.52 per cent, and lumber and forest products was 31 per cent.

Nature has made Iowa a grand agricultural State. Wisconsin, to keep abreast with other States, must foster and encourage manufacturing. Necessarily the basis of establishing the freight rates of the two States are not the same. The real test is the rate per ton per mile on the entire tonnage with no excessive rate on any commodity.

The rank of Wisconsin among the States of the Union in capital invested in manufacture is seventh, while Iowa is twentieth. The rank of Wisconsin in the average number of wage-earners employed is tenth, while that of Iowa is twenty-second. The proportion of average number of wage-earners employed in manufactories to total population is fifteenth, while Iowa is thirty-fourth. The rank of Wisconsin in the total number of wage-earners is tenth, Iowa twenty-second.

Wisconsin per capita production in agriculture is $76; in manufactures, $175. Iowa's production in agriculture was $164 and in manufacture $74; almost exactly reversed.

The reports show that 16,822,048 tons of freight originated in Wisconsin in 1900, over 75 per cent of which was product of mines, forest, and manufactures, while the census report of Iowa for 1902 reports as originating in Iowa 12,962,174, being 3,859,874 tons more than Iowa.

A report of the value of products in 57 of the leading manufacturing cities of the United States place Milwaukee as the twelfth city in the list. No city of Iowa is on the list.

Annual wages paid on farms in Wisconsin	$10,468,610
Annual wages and salaries, Wisconsin industries	58,407,597
Annual wages and operating expenses paid by railroads	25,715,236
Total	94,591,443

The railroad companies of Wisconsin have worked in harmony with the manufacturers of the State, and by their concentration and commodity rates have been a large factor in developing the manufacturing interests of the State. The commodity rates are not special favors to any individual, firm, or corporation, but are rates on special commodities, which any person, firm, or corporation similarly situated may enjoy.

Janesville was connected with Milwaukee by rail in 1852 or 1853. Farming lands in Rock County immediately advanced from $5 to $20 per acre and have continued to advance until they are now worth $50 to $70 per acre independent of their improvements.

During the same time farming lands in the interior of Ohio, New York, and in the New England States have materially declined in value. Many farms in New England can be bought for a fractional part of what the buildings cost. The residents of these places say that the decline in value there is due to the great productiveness of the West and the cheap rates of freight therefrom.

The railroad commissioners' report shows that 11 roads, out of 49 operated in Wisconsin, paid dividends for 1900, and that 8 companies in 1901 show a deficit in operating expenses of $157,040.62, to which, to show the full loss, must be added the interest paid on their bonded debt and taxes paid.

The Wisconsin Central road, with capital stock of $30,000,000, bonded debt $26,869,500, total $56,869,500, report the cost of their road and equipment to be $53,500,000.

They paid no dividend in 1902, but credited to profit and loss account for 1901, $355,114.27, which is less than one-tenth of 7 per cent, or less than $7 profit on each thousand dollars invested.

The Chicago, Madison and Northern road, a branch of the Illinois Central, operating 91.30 miles of road in Wisconsin, show by their report for year ending June 30, 1902, that they lost in—

Operation for that year in Wisconsin	$19,877.92
Adding interest on their bonded debt	135,603.02
Taxes	1,556.90
Total loss in Wisconsin for year ending June 30, 1902	157,037.84

The Chicago, Burlington and Quincy road paid 6¾ per cent dividend on entire line, and placed $2,572,995.51 to surplus, or about one-sixtieth of their indebtedness.

Duluth, South Shore and Atlantic Railroad reports June 30, 1902, a debit of $1,936,566 to profit and loss, showing conclusively a heavy loss in the operation of the road.

Chicago, Milwaukee and St. Paul road reports for year ending June 30, 1902, 6,603.85 miles of road, in 8 States, cost		$228,731,116.31
Stock	$104,866,300.00	
Funded debt	124,796,500.00	
		229,662,800.00
Gross earnings for year ending June 30, 1902		45,613,124.84
Income from other sources		434,314.68
Total income		46,047,439.52
Applied:		
Operating expenses, including taxes		30,196,895.04
Interest paid on funded debt		6,210,086.11
Dividends for year, about 6¼ per cent		6,584,619,00
Placed to surplus account		3,055,839.37
Total		46,047,439.52

About $1,000,000 more to surplus than in 1891.

The result is they got 6¼ per cent dividend on their stock and made 2½ per cent profit over and above interest paid on the part of the road on which they owed the $124,796,500 bonded indebtedness, which is about one-fortieth of their indebtedness.

The Northwestern Railroad for the year ending June 30, 1902, shows:

Total income for year ending June 30, 1902, less operating expenses	$19,553,085.64
Applied:	
Interest on funded debt	7,265,616.43
Rent, tracks, yards, and terminal	32,264.44
Taxes	1,419,865.51
Sinking fund	225,000.00
Interest paid in advance	9,195.44
Guaranteed interest	15,815.56
Construction expenses	4,697,555.04
Dividend, 8 per cent preferred; 7 per cent common	4,529,468.00
	18,194,780.42
Surplus	1,358,305.22
Total	19,553,085.64
Actual surplus from operation	1,358,305.22
Surplus from sales of land and town lot	680,405.84
Sinking fund	225,000.00
Interest paid in advance	9,195.44
Interest guaranteed	15,815.56
Actual surplus gain	2,288,722.06

Result: Paid about 7.4 per cent dividend on stock, and had $2,288,722.06 to apply on their indebtedness, it being about one sixty-eighth of the same.

That we may get a clearer idea of this matter let us suppose—

John Jones owns a farm, clear, which with equipments is worth $6,000; buys an adjoining farm and equipments on credit for $15,400. Relatively the proportion of stock and bonds of the Chicago and Northwestern road.

John Doe owns a farm, clear, with equipments, which is worth $10,400; buys another farm and equipments on time for $12,400. Relatively same proportion of stock and indebtedness of the Chicago, Milwaukee and St. Paul road.

Would it be considered an excessive profit for Jones, in an extraordinarily good year, to clear in operation $227 over and above the interest and taxes on the farm which he bought for $15,400?

Would it be considered an excessive profit for Doe to clear $312 in an extraordinarily good year over and above his taxes and interest on the $12,400 farm?

The per cent of surplus to indebtedness of these two roads for 1902 is the same as the profits to the indebtedness of these two supposed farm purchasers.

The executive officers of these two roads stand between their 9,200 stockholders and the general public. Justice and equity demand that the interests of both be protected, and that each be treated fairly.

The agriculural, commercial, and manufacturing interests of the State are all in a prosperous and flourishing condition. Ninety per cent of the people who produce this 80 per cent of the freight tonnage originating in Wisconsin believe that a mileage tariff would be a misfortune in the end to the agricultural interest and a disaster to the manufacturing and commercial interests of the State, and have earnestly protested against any legislation that will compel the roads to withdraw their concentrative and commodity rates.

STATEMENT OF MR. F. L. GILCHRIST.

The CHAIRMAN. Please state your name and occupation.

Mr. GILCHRIST. My name is F. L. Gilchrist; I am engaged in the lumber business at Kearney, Nebr.

The CHAIRMAN. You are a shipper, are you, on the various railroads entering your State?

Mr. GILCHRIST. Yes, sir.

The CHAIRMAN. What is the extent of your business?

Mr. GILCHRIST. We do a business of perhaps a couple of thousand cars a year—40,000 tons, approximately.

The CHAIRMAN. Will you briefly address yourself to the pending question, and make such statement as you think proper?

Mr. GILCHRIST. In general I am against any change being made in the manner of making rates. As the railroads have been engaged for something more than fifty years in making the rules and regulations under which we are now working, we would be averse to having new hands take the matter up. We have no radical fault to find with the present rates. We have our trials with the railroad companies very often, but we think we get justice.

In particular, although the companies have been these many years making rates, we find that matters come up every few days that are not covered by any printed rules or regulations; and we can take those matters up with the general office promptly, generally within an hour or two, by wire, and get a reply very promptly. I do not know just how that would be done if we had to go outside of the railroad company.

The CHAIRMAN. Is there any complaint in your country of excessive rates? Do you find, as a shipper, any reason to complain of rates as being too high?

Mr. GILCHRIST. No; I do not. There are plenty of complaints, however.

The CHAIRMAN. Are there any rebates or discriminations now by railroads?

Mr. GILCHRIST. None to my knowledge.

The CHAIRMAN. Not to your knowledge; not in your own experience; not in your own business?

Mr. GILCHRIST. No, sir.

The CHAIRMAN. And no complaints of rates being too high?

Mr. GILCHRIST. Oh, yes; just such complaints as there always have been, but no more than ever, and not generally from the people that pay them.

Senator CULLOM. Do you come here on your own account, or representing shippers or people generally, or the railroads, or how?

Mr. GILCHRIST. Representing our company, the F. H. Gilchrist Lumber Company.

Senator CULLOM. You came down here to be heard on this question?

Mr. GILCHRIST. Yes, sir.

Senator CULLOM. To protest against any change in the law?

Mr. GILCHRIST. Yes, sir.

Senator CULLOM. You think that if the law is changed you would not have the right to deal with the railroad as you choose, yourself, but you would have to go to a commission to get them to do it? Is not that your idea?

Mr. GILCHRIST. I do not understand that it would be necessary to overlook the railroad company; but we could not do business very pleasantly or profitably with the railroad company, I imagine, if we overlooked them and went to higher authority.

Senator CULLOM. You would not have to overlook them unless they would not do what you wanted.

Mr. GILCHRIST. In that event it would not be very pleasant.

Senator CULLOM. Then you would have to submit to what they said, instead of their doing what you thought was right?

Mr. GILCHRIST. We would think it advisable to submit to the railroad company's ideas, I think.

Senator CULLOM. You would rather submit than to go to anybody else on the subject?

Mr. GILCHRIST. I think so, because at the present time there would be nothing that would take us over them.

Senator CULLOM. You are getting along all right now with the railroads?

Mr. GILCHRIST. Yes, sir.

Senator CULLOM. And you could do the same thing for the next five or ten years, probably, without going to a commission of any sort?

Mr. GILCHRIST. Why, I think so.

Senator CULLOM. Then why are you alarmed about the prospect of giving a commission this power?

Mr. GILCHRIST. We imagine that we might have to take up matters with the Commission, and we surely would prefer to take up the matter with the railroad company.

Senator CULLOM. You could do that before you went to the Commission. But suppose the railroad would not do what you wanted, and you felt aggrieved and felt imposed upon by the railroad; would you have any objection to going to a commission then?

Mr. GILCHRIST. Yes; I think I would.

Senator CULLOM. You would not go anyhow?

Mr. GILCHRIST. I did not say that, but I think I would have an objection.

Senator KEAN. You are satisfied with the existing conditions?

Mr. GILCHRIST. Yes, sir.

The CHAIRMAN. That is all.

STATEMENT OF MR. J. A. CRAIG.

The CHAIRMAN. Mr. Craig, just state your name, occupation, and place of residence, please.

Mr. CRAIG. My name is J. A. Craig; my residence is Janesville, Wis.

As I have been here a day and a half and have listened to the elaborate statements that have been made here, I have made up my mind to cut my story very short, for otherwise it would be as much of a bore to me as I am sure it would be to you.

I am here representing solely the Janesville Machine Company, of which I have the honor to be the general manager. We are shipping our goods mostly to the Mississippi Valley country.

Senator KEAN. What do you make?

Mr. CRAIG. We are manufacturers of farming implements.

I am opposed to this legislation, and I came down here to tell this committee so. Perhaps I would have been like a great many other shippers over the United States who pay no attention to it, for the simple reason that they do not realize its importance to their business; but we have had a little bit of training, you know, up in our State, for the last four sessions, and we have begun to get a line on what railroad legislation means.

Speaking wholly for the interests of the Janesville Machine Company, it is to our interest to be left alone to do business exclusively with the railroad companies. I consider that the two roads that come to our town are practically partners in business with us, in this way: Our factory would not be worth anything if we had no means of transporting the goods out to the market. To get to the market we must have a railroad that will recognize our interest to the extent of helping us. We need that help in this way: At the present time, without mentioning any names, I can see the concentration of business coming. It is coming all over this country. It is already in our line. There is a large institution that is located at six different parts of the United States. There are eight concerns represented in this combination, as I will call it. They have all the advantages, as against us. They have the advantage of a large tonnage to ship, which is attractive to railroad companies. They own their own mines, they own their own forests, and they own their own rolling mills; so you see that they pretty nearly have a hold on the profits all the way along, from the raw material up.

If we did not have a line of railroad that was enough interested in us to let us get into these various markets, we would practically be confined to one-sixth of the district of this large combination and could compete with it only in that line. As it is, we have railroads that get their tonnage off our line, that are interested in our business, and consequently are going to be interested in getting us out to the trade; and that is why I contend that it is wholly to our interest to have no commission that would interfere with us in any way whatever.

The question has come up here, and I had probably better answer it in advance, "Why do you think this Commission would interfere if it had the right to make rates?" I can not answer that from personal experience, except in this way:

You had before you yesterday a distinguished gentleman from the

State of Iowa. We do business in that State, having two distributing points there; and we sometimes have differences with railroads, and claims to file, and we are referred to the Iowa Railroad Commission. Outside of that State, where there is no such condition as that, we can do business with the railroad companies. You may ask why the railroad companies do that. The railroad companies are bound to respect certain conditions in certain territories as the result of competition. If a commission has the power to make a rate, the railroad companies, knowing that that power is in its hands, are not going to take any chances on disturbing the rate situation all over the country, even in the case of an industry that is along their line, and it is to their interest to foster it.

Those are the conclusions that I draw; and I will go further, and say that they are proven by the governor's own statements yesterday. He said the manufacturers of Iowa were claiming that they were discriminated against. If they are, it is wholly on account of their own law that they have passed for their own interest, and it is in the hands of their own people.

I am very much afraid that before the sun goes down many days we will be under such a law. We can not help it. We have done the best we could to avoid it, but it is coming just the same, I think. It has not been requested by the business interests of the State. We have stood up there as a united body for four years; and I know not one interest, commercial, manufacturing, or financial, in the State of Wisconsin, save perhaps one that is trying to organize other interests over the country, that has any complaints whatever to offer. We have had in our State hearings after hearings before the committees of the legislature, and we have asked who was being injured by excessive rates; and never a man but one gentleman who has appeared before you has ever appeared before our committees there and claimed that this injury was being done. We know that that condition exists with us, locally.

Finally, I am opposed to granting the power to the Interstate Commerce Commission to make rates on general principles, for the reason that it would be putting in the hands of one tribunal, as it would seem to me, the power to act as judge, jury, and prosecuting attorney in the cases before it.

The CHAIRMAN. Thank you very much.

STATEMENT OF MR. H. S. RAND.

Mr. RAND. My name is H. S. Rand; I reside in Burlington, Iowa; I am president of the Burlington Lumber Company.

Beng interested in the lumber manufacturing industry in the States of Washington, Idaho, Minnesota, Wisconsin, and Iowa, I have taken the liberty of stating my views on the effect that the making of rates by law will have on the lumber industry.

There can be but one ultimate outcome of a rate-making commission. That is a distance tariff, and any other method would swamp the commission with complaints at once, and I venture to assert that it would take ten men ten years to settle the lumber tariffs alone.

Before May, 1884, there was extreme competition between the railroads running from Chicago, which represented the Michigan and *lake producing* lumber points; Minneapolis, with what was then

known as the Wisconsin and Minnesota lumber mills, and points like Winona, Dubuque, Clinton, Rock Island, Muscatine, Burlington, Keokuk, Quincy, Hannibal, and St. Louis, known as the Mississippi River mills, to get control of the Missouri River market, extending from Sioux City and Kansas City and west thereof. The manufacturers accepted rebates, underbilled cars, and resorted to every device known to move their lumber to Missouri River territory at the lowest minimum cost—I am one of them—and chaos would be a mild word to express the condition of the Missouri River lumber market at that time. The railroads and producers, both realizing they were doing business for less than cost, held a meeting and, after due consideration, agreed on what was known as the "Bogue differentials," which were largely based on the cost of producing lumber at the different points.

These rates have stood the test of time, and since that time there has always been a question as to whether it was more profitable to manufacturers next the stump in Wisconsin and Minnesota or at some point on the Mississippi River. This principle has been applied to the rates made from the southern or yellow-pine producing country and from the far western producing country to the great consuming market known as the "Middle West," with the additional consideration of the adaptability of the product to use in the consuming market.

As an illustration, I will refer you to the eastbound special tariff No. S. R. 662, issued by the Transcontinental Freight Bureau. You will see by this tariff that the rate on fir lumber, which goes in competition with Norway in ordinary dimension lumber and timbers, from Portland to St. Paul is 40 cents per hundred, or less than 4 mills per ton mile—about the actual cost of moving freight on the Northern Pacific in 1903—while on cedar lumber, which is very desirable for outside use, the rate is 50 cents. The first answer a lumberman will make to this assertion is that fir weighs more, but by reading more carefully we find that hemlock, larch, and spruce are also included with fir at the 40-cent rate. The only reason for this is that spruce, a light wood, is not desirable for outside use. Your answer to this might be that the Commission, who will have the power to make rates, can take all these matters into consideration, but, while not being very well versed in law, I submit that I can not see how this position would hold in the courts. They might as well make the same ruling that the rate on a bunch of Jersey steers should be less than the rate on a bunch of corn-fed shorthorns, because the Jersey steers will not be as desirable or worth as much in the consuming market.

Timber has been bought, mills built, and plants equipped and started throughout the entire country, both East, West, North, and South, on the basis that railroads and transportation companies would make rates based on the cost of the product as delivered to them, and the value of such product when delivered to the consuming community. In other words, they make the rates what the traffic will bear; and that is what we all do.

Twenty-eight years ago, when I started in the lumber business, the Middle West, the greatest of all lumber-consuming sections, composed of the prairie States, having little or no merchantable timber, procured their lumber from the adjacent States of Michigan,

Wisconsin, and Minnesota. Owing to the rapid increase of population and wealth in this consuming territory, and the rapidly diminishing supply of available timber in the producing territory, it was soon found necessary to use the great bodies of timber lying to the south. Transportation companies covering this section encouraged lumber producers to locate timber and build the necessary plants to furnish the lumber that the consumers might need. They gave all the implied, if not actual, promise that rates of transportation should be the same to common markets, or nearly so, regardless of distance; and on this basis a very large and prosperous business has been built.

To illustrate this I will refer you to tariff I. C. B8110, which makes the rate from Pecan Grove, La., 1,218 miles, to Omaha, 23 cents, 3.77 mills per ton; and Texarkana, 688 miles, to Omaha, 23 cents, 6.68 mills the same. The transcontinental roads soon found that the consumers in their timberless territory, like the Dakotas, could not be supplied with lumber in sufficient quantity, or at a low enough price from the limited supply in Minnesota. They also encouraged lumbermen to locate on their lines in California, Oregon. Washington, Idaho, and Montana, making the rates, regardless of distance, the same, taking into consideration the cost of production and the adaptability of the different kinds of timber to the uses of the consuming community. As an illustration, the rate from Portland to St. Paul on fir lumber, 2,100 miles, is 40 cents; from North Yakima on both fir and pine, 1,748 miles, 40 cents; from Bonner, Mont., 1,249 miles, 40 cents. If these rates were not the same, one of two conditions must apply—either the timber owner nearest the consuming community must raise the price at the point of delivery to the transportation company, thereby increasing materially the value of his stumpage, or the mill most distant must close down until the timber nearest the market has been cut. In neither case does the consumer derive any benefit.

Another condition to which I desire to call your attention is the fact that the rates to common territory, where the products of mills located in the South, North, and West meet, the rates must be made without regard to distance. Unless this is done the territory must be given up to the producers nearest the market. The State of Nebraska is a very good illustration, where the product of nearly all the timber-producing territory meets on common ground, greatly to the advantage of the consumer. Lumber sells at retail in the eastern part of that State as cheap as it can be bought in Iowa, Illinois, Indiana, or Ohio.

I can best illustrate my point by making this committee, the members of which are fully as able and intelligent as any commission they might create, into a rate-making commission, and I will ask you what you consider a just rate from the producing country to but one of the thousand or more consuming points? I am prepared to show cause why the rate should be lowered from each and every point, from the standpoint of the manufacturer. You realize it is not good form, or consistent, to ever show why the rates should be raised.

Here is a map that will show you the points that I desire to illustrate, giving you the rates, showing where the timber is located, and the rate per ton per mile from every point except the points that they do not want to show. They do not tell you about Pecan Grove having a 3.77 rate there. Pecan Grove is next to New Orleans.

This map was gotten up by the yellow-pine people as a complaint, show why their rates should be lowered, and I just took it along th me because I thought you might like to see it.

The CHAIRMAN. This is a very interesting map. It shows the situa-n very well.

Mr. RAND. Now, I ask you to be a regulating commission. You n do this simply at your leisure. Here are the rates to Omaha, for ample:

	Per ton per mile.
nneapolis to Omaha (368 miles), rate 18 cents	9.78
rlington to Omaha (290 miles), rate 11½ cents (Iowa distance tariff)	8.62
ce Lake to Omaha (502 miles), rate 21½ cents	8.56
xarkana to Omaha (683 miles), rate 23 cents	6.73
n Francisco to Omaha (1,832 miles), rate 50 cents	5.45
ker City to Omaha (1,445 miles), rate 40 cents	5.5
rtland to Omaha (1,802 miles), rate 50 cents	5.5
can Grove to Omaha (1,218 miles), rate 23 cents	3.77

With your permission I will read the following letters from men th whom I am interested in the lumber business in widely different ctions of the country; these are in reply to mine of May 1:

NORTHWESTERN LUMBER COMPANY,
Eau Claire, Wis., May 4, 1905.

r. H. S. RAND, *Burlington, Iowa.*

DEAR SIR: Replying to your letter of the 1st I would say that you rtainly have a very serious task before you in arguing to a satis-ctory conclusion the intricate complications arising from the pro-sed legal authority for the Interstate Commerce Commission to ake freight rates. It always has seemed very clear to me that the terstate Commerce Commission, given this authority, could take t one line of action, and that was such as was suggested in Senator organ's letter to Senator Elkins, a reasonable classification and a r ton per mile rate. But when you have reached this conclusion u have only just begun to scratch the surface of the question. The mplications which begin to arise are so infinite and far reaching in eir character that it seems now, and always has seemed to me, the ight of folly for any quasi political commission to undertake to al equitably with a subject in its general bearings all over the untry, when it always has taxed the greatest ability it was possible obtain by the railroads to handle satisfactorily even small sub-visions of the great question.

If rates per ton per mile were generally established and could maintained, the result, so far as the lumber business is concerned, ould be the greatest upheaval that this line of traffic has ever perienced. You understand, probably, that the basis rates from rious points of production to points generally of consumption, far as western and southwestern business is concerned, were orig-ally what was called the Bogue differential award. This award promulgation of relative rates was the result of a very careful vestigation of the cost of the product in the various competing arkets, and rates from these markets to points of consumption were ade to conform very largely to the cost of the product in the dif-rent markets. While these rates have been modified and changed mewhat, this award of Bogue's still forms the basis from and to

lumber points in the territory mentioned. This being the case, the question of miles hauled by the railroads cuts very little figure, and if you now reverse the order of things and base the entire rate upon the actual service done by the railroads you will so change the relations of different producing markets as to produce chaos in our business.

Yours, very truly,

J. T. BARBER,
President.

GREEN BAY LUMBER COMPANY,
Des Moines, Iowa, May 4, 1905.

Mr. H. S. RAND, *Burlington, Iowa.*

DEAR SIR: I am just in receipt of your favor of the 3d, and in reply to same will say that we do not feel that the mileage basis would affect us disadvantageously at our plant at Wiggins, Miss., for the reason that the distance to the territory east of the Mississippi River is less from that point than from the mills in Arkansas, Louisiana, and Texas, which now enjoy approximately the same rate we have. We feel, however, that the mileage rate would work to the disadvantage of the great majority of the lumber manufacturers, particularly from the territory including Montana and the West.

If the distance tariff is determined upon it will, of course, take in other commodities than lumber, and I believe would work seriously to the disadvantage of the Iowa farmers and in that way would affect all of the merchants doing business in the State for the reason that they would be at a disadvantage in competing with the producers in territory east of here, and it would affect the price of land as well as the price of the produce therefrom.

We feel that you, as well as ourselves, are interested in the probable effect of such a rate on the agricultural interests of this State, as the lumber business can not thrive if the farmers are not prosperous.

Mr. E. C. Finkbine has also been invited to appear before this committee, and will probably be in Washington on Monday, the 8th, or Tuesday, the 9th, and he hopes he may have the pleasure of meeting you there.

We thoroughly appreciate your writing to us in this connection, and hoping our views will coincide with yours, I remain,

Yours, very truly,

K. E. JEWETT.

Mr. RAND. In conclusion I desire to state that I can find no demand from either my business associates, my friends and neighbors in the manufacturing and jobbing business, or from the farmers in my community for a rate-making commission. Personally, I think it would be desirable both for the railroads, the producer, and the consumer to have the unit of volume for classification changed so as to make a trainload rate as well as the present carload and less than carload rate; and if desirable, I would be pleased to answer any questions on this point.

Senator CULLOM. As I understand, you want a train-load rate?

Mr. RAND. I want a train-load rate, because it would be cheaper for the railroad company, cheaper for the producer, and of advantage to the consumer in my business. I move my stuff from St. Paul

by boat, and you spent a good many millions of dollars to make it so that I could move it for 1 cent per hundred pounds from St. Paul down to Burlington.

Senator CULLOM. You are at Burlington now, are you?

Mr. RAND. At Burlington now; yes, sir; but I have some mills in Idaho and other places.

Senator CULLOM. Scattered all around, so that you can catch the business either way.

Mr. RAND. I have here the Iowa distance tariff, which I would like to leave here. I do not know whether you gentlemen have ever seen that. You might want to look at it. Here is the very point I want to make, and that is that if you disturb one rate in Omaha you are going to disturb all the rates here—10,000 rates—all based in conjunction with the Omaha rate, the transcontinental rate on lumber from Portland and all those points.

The CHAIRMAN. You say that if you disturbed one of these rates you would have to change all the rest?

Mr. RAND. That is my contention.

The CHAIRMAN. Ten thousand rates?

Mr. RAND. If you made it so that we could go to the Commission and make a complaint, then you would have to call in all the lumber manufacturers of the United States and let them be heard before you changed the rate.

The CHAIRMAN. These rates are adjusted now by consent between the shippers and the railroad?

Mr. RAND. Certainly.

Senator FORAKER. If this book is not to go in the record, I think the witness ought to describe what it is. It purports to be "Rates on lumber, shingles, and other articles enumerated on page 35;" and Mr. Rand says there are 10,000 of those rates connected with Omaha.

Mr. RAND. Well, when I say 10,000—I have not examined them, but every place——

Senator FORAKER. How many pages are there in that book?

Mr. RAND. There are 333.

Senator FORAKER. And those pages are all full of rates?

Mr. RAND. Yes.

Senator FORAKER. Names of places and rates?

Mr. RAND. Names of places and rates; yes, sir.

There is one thing I would like to say in connection with some talk I heard here about the rate on live stock from Texas to Pierre, S. Dak. I was in a convention where I heard lumbermen say that they were going to take that matter up—the railroads hauling the live stock too cheap—because they charged $150 a car for hauling lumber from Texarkana to Pierre.

Senator FORAKER. And that is a much higher rate than the rate on live stock?

Mr. RAND. It is much higher than the live-stock rate, and there is no risk; it is dead freight.

Senator CULLOM. Well, you seem to be entirely satisfied.

Mr. RAND. I am perfectly satisfied and perfectly content with the present way. I know that if I have any just complaint I can go and get the United States to prosecute it for me, and they will pay my attorney's fees and everything else. I do not ask that I may be judge and jury to decide that case.

Senator CULLOM. Do you know anybody that does?

Mr. RAND. I do not know anyone in our country—in our section of the country that does.

Senator CULLOM. Apparently this is the most unanimous hearing that I ever attended. There does not seem to be anybody that is dissatisfied.

Mr. RAND. I am from the State of Iowa, and I differ entirely with Governor Cummins about the treatment of manufacturers in Iowa. The railroads give every opportunity for you to do business on the interstate rate. The principal reason that we do not do more manufacturing in Iowa is that it is more profitable to put your money into farming. Another reason is the inelasticity of our Iowa distance tariff, and another reason is that when you want outside people to come in and go into manufacturing they always find this Iowa distance tariff law and they say: "If you are fools enough to make that kind of a law we will not live with you."

Senator FORAKER. You have the distance law there, and you think it does not work well?

Mr. RAND. Yes, sir. I have this tariff right here, so that you can see it.

Senator FORAKER. I say, does it work well or not?

Mr. RAND. I say it is to the disadvantage of Iowa to have it. I think that that is the reason that outside capital will not invest in Iowa.

Senator NEWLANDS. I want to ask you about this distance tariff. Do you think that the distance tariff in Iowa prevents the location of manufacturers in Iowa?

Mr. RAND. Certainly.

Senator NEWLANDS. Now, give an instance of how it operates. Take a particular place.

Mr. RAND. It operates in this way: I will take a particular place; my own town of Burlington, Iowa. We want coal, and our nearest point at which coal is mined is Albion, a hundred miles away.

Senator NEWLANDS. Mined in Iowa?

Mr. RAND. Yes, sir. I want to get a hundred carloads of coal a day or ten carloads of coal a day—a regular supply—and in other places railroads make a rate on that. But if the Chicago, Burlington and Quincy makes a rate on whatever number of carloads of coal I wish carried from Albion to Burlington, it must at the same time make the same rate for 100 miles in any direction on the Chicago, Burlington and Quincy on coal for one single carload.

Senator NEWLANDS. For one single carload?

Mr. RAND. Yes, sir. The minimum is at a single carload all the time.

Senator NEWLANDS. Then you would wish a system under which you could order a large amount of coal, and, in view of the wholesale transportation of that coal, get a lower rate than others?

Mr. RAND. Yes, sir—well, no; not than anybody else who ordered the same amount.

Senator NEWLANDS. The same amount, from the same place?

Mr. RAND. Yes, sir. Then there is this commodity rate that this gentleman from Wisconsin spoke of, where you concentrate stuff; that has an effect.

Senator NEWLANDS. Then the essential part of success in manufac-

turing is that a manufacturer should be able to get his coal transported to him at a less rate than the other people? Is that it?

Mr. RAND. Not necessarily.

Senator NEWLANDS. If he gets it in wholesale quantities?

Mr. RAND. He must get a low rate on coal, because they get low rates.

Senator NEWLANDS. He must get a lower rate than other communities that are near?

Mr. RAND. He would not get any lower rate than other communities on the same amount.

Senator NEWLANDS. Yes. So that it is the equality of those rates that handicaps manufacturing in your State?

Mr. RAND. Yes, sir.

Senator NEWLANDS. And the only way to promote manufacturing there is to promote inequality of rates?

Mr. RAND. It would be possible that that is the way—you must have commodity rates. If it was not for the railroad giving me a commodity rate, for instance, on my logs in Minnesota, I could not run my mill in Iowa, because I could not move the stuff out. If the same law applied in Minnesota that we have in Iowa, I could not have bought the Indian timber from the Government and have it hauled on a railroad and put into the Mississippi River and float it to Burlington.

Senator FORAKER. But you do not mean that the rates you get shall be denied to others who are similarly situated?

Mr. Rand. Certainly not; certainly not.

Senator NEWLANDS. Similarly situated in the same locality, you mean—in the same town?

Mr. RAND. No; in any town. I think that any other man who takes a trainload 75 miles ought to have the same rate that I have.

Senator NEWLANDS. Then you would have a system of transportation that would give the wholesaler a less rate than the retailer?

Mr. RAND. I certainly should, because it costs less.

Senator FORAKER. You would have flexibility in rates?

Mr. RAND. Flexibility in rates. Now, I will tell you what they do in Iowa: Whenever you come to talk about an Iowa tariff, and come to the railroad, they refer you to the railroad commission; and you can not get any change from it.

Senator FORAKER. They fix a maximum rate, as I understand it?

Mr. RAND. A schedule of reasonable rate charges.

Senator NEWLANDS. You have in Iowa a great many prosperous towns, have you not?

Mr. RAND. Yes, sir.

Senator NEWLANDS. Iowa is noted as being a State of comfortable homes, is it not?

Mr. RAND. Yes, sir.

Senator NEWLANDS. The people there, on the whole, are contented and happy and prosperous, are they not?

Mr. RAND. Very much so.

Senator NEWLANDS. Rather exceptionally so, are they not?

Mr. RAND. It is the best State in the Union to live in.

Senator NEWLANDS. I think so—one of the best, undoubtedly. Do you not think that that condition is a great deal better than the condition of a State that crowds one-half of its population into two great

cities—one at one end and one at the other—which said States have exceptional advantages in transportation that enable the people located in those cities to absorb the production of that State?

Mr. RAND. It is a very much better place to live in, but it is not so good a place to make money in.

Senator NEWLANDS. That is the difference?

Mr. RAND. That is the difference.

Senator NEWLANDS. Yes; so I think.

Mr. RAND. Thank you, gentlemen, for giving me your time.

STATEMENT OF MR. S. W. FORDYCE.

The CHAIRMAN. Colonel Fordyce, state your name, place of business, and occupation, please.

Mr. FORDYCE. My occupation at the present time is building railroads, shipping materials of different kinds over railroads, and various other kinds of business too numerous to mention.

I have been engaged in railroad matters, strange as it may seem to some of you gentlemen, since 1853, off and on, not continuously, however—barring the unfriendly relations between the States. I was not engaged in railroading then, and I will also except the few years that I was sent away to school. The balance of the time I have been almost continuously building railroads, building up bankrupt railroads, and for many years I was the chairman of the executive board of the Southwestern Traffic Association, which involved the movement of a large portion of the traffic between the Atlantic seaboard, Texas points, old Mexico, and California.

Another thing I want to say is that I am at present engaged in building four different lines of railroad in four different sections of the country. I am, in a certain sense, shipping lumber. I am the president of what is called the Houston Oil Company, of Texas, which company owns a million acres of long-leaf pine land, numerous oil wells, pipe lines, steamboats, refineries, etc.

In discussing the question of government regulation of railway rates I shall not attempt to go deeply into the constitutional side of the question, but merely suggest for the consideration of the committee the question of whether Congress really has the right to fix the compensation to be charged by a carrier for the transportation of passengers or merchandise, and if so, can such powers be delegated to any body or commission? To both of these propositions I am inclined to dissent. In my judgment it requires a very loose and liberal interpretation of the Constitution to read into the clause giving to Congress the power "to regulate commerce among the several States and with foreign nations," the power to prescribe the compensation to be received by one citizen for a service rendered another.

Considered historically there is little reasonable doubt that no such construction of the clause was understood by the framers of the Constitution. In the absence of any explicit expression it is fair to assume that had they intended to confer such a power they would have done so affirmatively and not by implication. A more reasonable supposition is that what they had in mind was that no State should discriminate against the commerce of other States of the Union by levying import duties on goods crossing its border and

to avoid everything that might interfere with freedom of intercourse. That they could have had in mind conditions as they exist to-day is, to say the least, improbable. No railroad then existed in the world, and interstate commerce was limited to wagon, ferry, and ocean transportation. To say that the framers of the Constitution intended to confer upon Congress the power to fix prices for the future transportation of merchandise is to attribute to them intentions quite foreign to the spirit in which the Government was founded. If no such powers were originally conferred upon Congress, is it a reasonable presumption that Congress can assume such powers and in turn delegate them to a commission, together with the right to investigate of its own initiative alleged violations of the law; submit evidence gathered by itself to itself, and as judge and jury finally pass upon the merits of the case and prescribe the penalty?

I seriously doubt if such power exists, and do not believe that Congress in creating the Interstate Commerce Commission intended that it should exercise more than advisory functions. That this was so understood by the Commission itself is well shown by Judge Cooley, who said in the Texas Pacific Case *v.* Interstate Commerce Commission, decided on March 30, 1897:

> If the Commission has the power, of its own motion, to promulgate decrees or orders which thereby become rules of action to common carriers, such exercise of power must be confined to the obvious purposes and directions of the statute, since Congress has not given it legislative powers.

That such was the understanding of the leading members of both the House and Senate during the debates preceding the passage of the interstate-commerce act is shown by the reports in the Congressional Record at that time.

Representative Reagan said on January 7, 1885:

> One of the greatest troubles I have had, even with the friends of legislation in this direction, has been to get them to understand that this is not a bill to regulate freight rates; that it does not undertake to prescribe rates for the transportation of freight. I know the difficulties which would attend any measure attempting to prescribe rates of freight. I am persuaded that no law fixing rates of freight could be made to work with justice either to the railroads or to the public, and I have intended from the beginning to avoid that difficulty.

Mr. Garland said on January 9, 1885:

> But when Congress, in the exercise of a legislative power delegated to it by the Constitution, may do a thing, where do we find the power in Congress to delegate this authority delegated to it to a mere commission of seven, five, or three, as the case may be?

Mr. Slater said on January 14, 1885:

> We do not intend to fix the price at which freight shall be moved upon any of the roads.

Mr. Williams said on January 16, 1885:

> We can not say what the rates on the railroads ought to be for freight and passage money. We can not pass a general law. We can not appoint a commission and give them power to regulate it, because that would be delegating to the commission legislative power, which Congress has no right to do.

Mr. Miller said in the Senate April 22, 1886:

> The bill does not attempt to fix rates. The committee did not believe it was wise for Congress to undertake to do that with its present imperfect knowledge. It did not believe it was wise to give that power to any commission which might be organized under that bill.

Mr. Walthall said:

Does any Senator feel safe in announcing that Congress can confer on a commission the power to regulate the rates of transportation so as to bind the railways? And if it can not fix the rates, what good can a commission serve?

These extracts are sufficient to show the temper and spirit of Congress when the present law was passed, and should serve as an effective answer to those who assert that the present inefficiency of the Commission is due to the fact that the courts have deprived them of the power that Congress intended them to possess.

Able counsel have doubtless raised and discussed this point, and I shall therefore restrict myself to a discussion of some of the economic and practical aspects of the question.

When a change in existing conditions is sought, it is but fair that the burden of proving that the suggested change is desirable or necessary should be on those seeking the change.

It has not been shown, and in my judgment can not be shown, that the industrial life of the nation is languishing under such oppressive exactions at the hands of transportation companies that Government control of the rate-making power is necessary for its relief.

A member of the Interstate Commerce Commission (C. A. Prouty), in an article in the North American Review for June, 1904, makes this statement:

For fourteen years this Government has been attempting to regulate railway rates by enforcing competition. At the end of that period, after two epoch-making decisions, we are confronted with increasing monopoly with advancing rates and with no probable relief in sight.

It is unquestionably true that in some instances and on some classes of freight rates are fractionally higher to-day than were charged for like services during the periods of industrial depression in 1896 and 1897; but taken as a whole it is a fact easily proved by statistics that the trend of rates as expressed in money has been downward instead of upward. For example, the average rate per ton per mile in 1882 was 11.02 mills; in 1892, 8.98 mills; in 1902, 7.57 mills.

Any comparison of prices of any article or class of articles extending over a series of years with the object of ascertaining whether or not prices have risen or fallen is futile and without meaning unless considered in connection with the range of prices as a whole during that period. In fact the essence of the question lies in the elementary rule of economics, that the real value of a thing is what it will exchange for, and that the value of money is what it will exchange for. Quoting from John Stuart Mill:

If prices are low, money will buy much of other things, and is of high value. If prices are high, it will buy little of other things and is of low value. The value of money is inversely as general prices, falling as they rise and rising as they fall.

The United States Department of Labor has compiled very interesting and valuable tables of statistics available to everyone showing that there have been very material advances in the prices of almost all commodities as expressed in money during the past five or six years. It follows, therefore, that the purchasing power of a given quantity of railway transportation is to-day materially less than during the decade 1890–1899.

Therefore, regardless of the fact that railway rates as expressed

in terms of money have shown a declining tendency during the past twenty years, a greater proportionate decline has taken place in the value of the compensation received for the unit of railway transportation. This has been due to the advance in prices of all commodities and the consequent decline in the purchasing power of money since 1898.

Mr. H. T. Newcomb, in a very able discussion of this phase of the question in one of the recent magazines, reaches the conclusion, by a comparison of railway rates with the prices of commodities in general, that a given quantity of any of the principal commodities will to-day purchase 5.37 to 48.89 per cent more railway transportation than at the average price and rates of the years 1890 to 1899, and that nearly all producers have seen the prices of their commodities so increase as compared to railway transportation that the latter is now relatively cheaper than in 1898 and 1899.

This should effectually dispose of the question whether there has been actual advance in railway charges and whether our industries are suffering from the exactions of our transportation systems.

The statement is often made by those who are not familiar with the operation of railroads that the cost of transporting freight is constantly decreasing and for this reason the railway companies can afford to render their services at constantly diminishing rates. It is not difficult to reach a theoretical conclusion that the cost of transporting freight should diminish with the increase in the volume of traffic. It is, however, impossible to make this conclusion harmonize with facts. During the past five or six years the price of nearly every article entering into the construction and operation of railways has materially advanced. In many instances the cost of soft coal has advanced more than 100 per cent since 1898, while steel rails have risen from $17 per ton in 1898 to $28 per ton at the present time, and other articles in similar proportion, thus rendering the cost of production of the unit of railway transportation materially greater than in 1897 and 1898. On examining the question more closely we find that the increase in operating expenses not only keeps up with the increase in gross earnings, but frequently grows at a relatively higher rate, and that the percentage of operating expenses to gross earnings for the year 1904, notwithstanding the great increase in the volume of traffic, was greater than any year since 1894. To handle the constantly increasing tonnage the railways are necessarily forced to make great increases in their capital in order to provide for improvements to track and terminals and to purchase new and more powerful equipment. This new capital invested in railway property is as much entitled to a return as the capital originally invested. The conclusion is therefore apparent that not only are railway charges, when compared with the prices of other commodities, not increasing, but that the railways are compelled to invest such huge sums of money in improvements that only a very moderate rate of return can be paid the investors in railway securities.

In considering the practical workings of a system under which the rate-making power shall be vested in the Interstate Commerce Commission we are confronted by many practical difficulties, which are apparently lost sight of by those who advocate giving the Commission this additional power.

The Senate committee on January 18, 1886, in submitting a report with the bill which later became the interstate-commerce law, declared the fixing of rates by legislation to be impracticable, and added:

> Those who have asked the adoption of this plan of regulation have suggested the establishing of rates by a commission; but it is questionable whether a commission or any similar body of men could successfully perform a work of such magnitude, involving, as it would, infinite labor and investigation, exact knowledge as to thousands of details, and the adjustment of a variety of conflicting interests.

Again, Chairman Cooley, of the Interstate Commerce Commission, in discussing the same subject, said: "Moreover, an adjudication upon a petition for relief would in many cases be far from concluding the labors of the Commission in respect to the equities involved, for questions of rates assume new forms and may require to be met differently from day to day; and in those sections of the country in which the reasons or supposed reasons for exceptional rates are most prevalent the Commission would in effect be required to act as rate makers for all the roads and compelled to adjust the tariffs so as to meet the exigencies of business, while at the same time endeavoring to protect the relative rights and equities of rival carriers and rival localities. This, in any considerable state, would be an enormous task; in a country so large as ours and with so vast a mileage of railroad it would be superhuman. A construction of the statute which would require its performance would render the due administration of the law altogether impracticable, and, in fact, tends strongly to show that such a construction could not have been intended."

It will be apparent to anyone who will make a careful and unprejudiced examination of the multitude of details and considerations entering into the making of a railway rate that this work can not be fairly and honestly done for the whole country by any commission, however honest, intelligent, and efficient it may be. This examination will also serve to correct the popular misapprehension that railway rates are arbitrarily made by any one man or association of men. Every proper adjustment of rates is the product of certain peculiar combinations of economic conditions rarely identical in any two instances. The existing rates of transportation companies have not been arbitrarily established, but are the outgrowth of daily conferences between the railroads and the shippers, and are adjusted to meet the constantly changing commercial and competitive conditions.

To properly understand and appreciate the conditions peculiar to a certain territory requires such an intimate acquaintance with local conditions and requirements that it can not be acquired by any man or body of men not in daily touch with the actual flow of business, and with a full knowledge resulting from actual experience and observation of what is necessary to stimulate and protect the interests of the commercial enterprises within the territory. So vast is the amount of detail knowledge required to deal with the problem of rate making that a traffic man trained in one territory does not readily adjust himself to conditions prevailing in another.

Men of great ability have spent the greater part of their lives in the study and practice of rate making, yet it is highly improbable that a commission of six or eight could be selected from their number

that could intelligently handle the situation as a whole and make the rates for the entire country.

Few railroad rates can be changed without throwing out of adjustment large numbers of other rates intimately related to them. So dependent are the railway rates one upon the other that the fixing of a rate from Omaha to Chicago will determine the rate from Omaha to St. Paul or New Orleans. Matters of this character come up daily, and no one who is not in the closest possible touch with the situation can so harmonize rates as to meet the requirements of these changing conditions.

It is therefore not a reasonable presumption that we could obtain for service on the Interstate Commerce Commission men of greater ability than those engaged in railway-traffic work, and we certainly can not hope to so obtain a percentage of wisdom so much greater as to compensate for the lack of that knowledge which comes only from being in close daily contact with the actual business of the country.

Considerable confusion of mind exists between rate making and rate maintenance. There is no connection between the two. No well-informed and fair-minded man now contends that rates in this country are too high, for the fact is well known that we enjoy the best and cheapest transportation in the world, our average rates being about 50 per cent of those charged in England and probably not more than 40 per cent of those prevailing on the continent of Europe. There has been, however, considerable deserved dissatisfaction on the subject of rebates and discriminations. In behalf of such practices I have no word of defense, but happily they are rapidly becoming things of the past. I am not overstating the matter in saying that the railways do not now and have not in past years made discriminations in rates and granted rebates of their own volition. They will welcome any legislation that will effectually abolish them. The Elkins law as it now stands is sufficiently potent to deal with the question, and to legislate further on the subject would be to uselessly encumber the statute books. To grant the rate-making power to the Interstate Commission would have no bearing whatever on the subject of rebates. It would be quite as easy for the railroads inclined to do so to grant rebates from the rates established by the Commission as from rates established by themselves. One of the principal arguments advanced in favor of giving rate-making powers to the Commission has been that it would protect the public against rebates and discriminations. The subjects are so radically different that it is not perceived how the desired end could be accomplished in this way.

The failure of the railways in their efforts to abolish rebates has been largely due to the attitude of their larger patrons. Nearly every large industrial enterprise has in its employ a traffic manager whose duty it is to procure special advantages in the way of rates applicable to the business of his employer, and the value of such a man to his employer depends upon the measure of success he obtains. The concessions obtained in this way are usually due to threats that if the demand of the shipper is not complied with his entire tonnage will be diverted to some competitive line.

The statement is sometimes made that Government control of the rate-making power is necessary for the protection of the shipper so situated that he has not the benefit of railway competition. The

fact is that every railroad company through all of the representatives of its traffic department is striving to build up industries at local points and to thoroughly develop the local or short-haul traffic. It is inconceivable that any traffic manager could be so shortsighted as to fail to recognize the direct and immediate interest his company has in the upbuilding of every part of the country which it serves. In fact, the interests of the railway are so intimately allied with those of its local territory that it can only expect increasing prosperity by steadily developing all traffic that is susceptible of development at any and all points on its line.

In my judgment the Interstate Commerce Commission at the present time has all the power that can be safely intrusted to it. The Commission has the express power under the law to condemn and order the discontinuance of any unjust discrimination in rates or any rates which are unreasonably high. The Commission has frequently exercised its power, and in the instances in which it has not been sustained by the higher courts it has been shown that the Commission was attempting to exercise powers which Congress did not confer upon it.

While it appears to me that the enforcement of the present law through the machinery now provided is all that is needed to prevent any railway from unreasonably advancing its charges or from continuing to maintain unreasonably high rates, the present method is subject to so many delays in the courts that certain changes might be advantageously adopted. To this end I would advocate the creation of a court of transportation, composed of lawyers and experienced railway traffic men. The appointments to be entirely nonpolitical and for life. In order to command the services of traffic men competent to pass intelligent judgment upon matters coming before them, their compensation should be sufficiently high to induce them to give their time to the public service, and probably higher than is now paid to judges of the civil courts. The rate-making power should be left to the transportation companies themselves, and they should be allowed full initiative to originate and carry out those policies best calculated to develop the traffic of the country. The functions of this court should be to hear and decide the merits of complaints, allowing all interested parties or communities to intervene and be heard. The present antipooling clause of the interstate-commerce law should be repealed, and railroads should be permitted to make such divisions of their earnings or traffic as they choose, provided their rates are not unjust or unreasonable. Before railway pooling was abolished it was found to be the most effectual means of preventing rebates and discriminations and protecting the carrier against the demands of the large industrial combinations. The function of pools is simply to assist in assuring the public that each carrier will stand by the fixed rate until changes are made through methods which will least disturb business. If again made legal, and their operations subject to the inspection and review by the court of transportation, they would probably be the most effectual means that can be adopted for abolishing rebates and other discriminations. Provided their rates are just and reasonable it is not perceived what interest the shippers can have in how the railways divide their tonnage or their earnings.

One of the direct results of depriving the carrier of the rate-making power would be to discourage the individual initiative in railway building that has had such an important bearing on the material development of the country.

Few of our railways have been built to supply a demand for transportation existing at the time of their construction, but with the hope of creating a remunerative traffic by opening up new territory and building up new industries.

It must and it does require ability and courage of a very high order in our railroad builders to invest huge sums of money in pushing their lines into the vacant and desert places of the country, with the hope that immigration will follow their pioneer leadership and ultimately justify their daring. How often their plans have miscarried and how far in advance of the times many of our pioneer railways have been built is well witnessed by the number of railway receiverships during the past twenty years. No such wholesale bankruptcies have occurred in any other industry, and in no other business within my knowledge has so much capital been swallowed up and lost. In few other vocations are the returns on invested capital so meager.

But for this private initiative our advance in material prosperity could not have been so rapid, and many parts of the country now enjoying all the advantages of close and daily contact with the outside world would now be undeveloped and unknown.

Little, if anything, has been said in regard to the degree of responsibility the Government should assume if it assumes the right of limiting the earning power of its citizens engaged in the business of transportation. No Government honestly and fairly administered can undertake to limit the earnings of its citizens without guaranteeing their liabilities; therefore if the Government is to assume the rate-making power it must also assume the liabilities of the carriers and guarantee a fair return on the capital invested in their properties.

I can add nothing on this point to the very able discussion of Mr. Walker D. Hines, formerly of the Louisville and Nashville Railway, who said, in part:

> It must always be remembered that although corporations may hold the legal title to railroads, yet in the last analysis it is individuals who own railroad securities and who have furnished the capital with which railroads have been built and improved. Many such individuals are very wealthy, but greatly larger numbers are only in moderate circumstances, and the vast body of frugal people who have invested their surplus earnings in insurance or savings banks must rely to a very large extent upon the stability of railroad securities owned by the institutions to which they have confided their savings. An attack, therefore, upon railroad securities is not merely upon the corporations but ultimately upon the great number of people whose savings are directly or indirectly in railroad securities.

Judging the probable future activity of the Interstate Commerce Commission, if given the rate-making power, by their actions in the past, the presumption is fair that most of their activity would probably be in the direction of a constant reduction of rates. If, through the enterprise and ability of railway managers, profits should be increased by the increase in traffic or the reduction in operating expenses, in all probability the rates would be correspondingly reduced without any Government guaranty for losses due either directly or indirectly to mistakes of the Commission, or any indem-

nity to the holders of railroad securities against the losses to be sustained in years of depression. They would probably enjoy but minimum profits in years of prosperity with no provision against suffering the maximum of losses in years of adversity.

It has been proposed to give the Commission power to make rates which shall go into effect immediately. If such a power were conferred upon the Commission it would work a hardship upon the railways the evil consequences of which would be difficult to estimate. Under this power, if a very low rate were made and it subsequently appeared that it was below the cost of the service, no opportunity would be given for the recovery of the great loss sustained by the railways or the irreparable damage to communities and individuals affected by it.

If the rate-making power is placed in the hands of the Commission it is not an unreasonable presumption that their actions will be governed to a large extent by the examples of the various State commissions which have endeavored to fit their scales of rates to an arbitrary mileage standard.

It will be obvious to anyone who examines the question closely that distance is only one of many elements entering into the cost of transportation, such as interest on expensive terminals in large centers of population, differences in grade and curvature which frequently renders the transportation of a unit of freight more expensive over a short division than over another with longer mileage but lighter grades, the possibility or impossibility of procuring loading for the cars both ways, and many other considerations not understood by those who are inexperienced in the transportation business.

From the exercise of the rate-making power by a Commission it is but a step to Government ownership with all its attendant evils, among which might be reasonably expected increased cost of transportation, inefficiency in service, political influence in the appointment of officers and employees, and the probable ultimate destruction of our present form of Government.

It is my conclusion, based on an experience of more than forty years in the construction and operation of railways, that the rate-making power can be safely left to the free play of competitive forces, giving the carriers the right of agreement between themselves subject to the close inspection and supervision of a court composed of honest, competent, and experienced traffic men. These men will know that they can not fairly and intelligently make rates for the whole country and will confine themselves to the question of whether a rate is unreasonable or unjust. Their decision should be final until altered conditions render a modification of their ruling desirable or necessary. The case could then be reopened and readjusted.

It seems to be the prevailing opinion that on account of the railways having the right of eminent domain their operations should be restricted and virtually controlled by the various States through which they extend as well as by the General Government. One of the very best articles on this subject has been written and published by Mr. L. F. Day, vice-president and general manager of the Minneapolis and St. Louis Railway Company. Mr. Day has had twenty-five years' experience in the railroad service, covering traffic as well as general operations. He says no government of ours has ever given

the right of eminent domain to a railroad company in the sense of granting it for the benefit of that company. The right of eminent domain is for the public good, and so given for that and for no other reason. It was granted because without it there never could have been a highway, and the country could not have been populated nor developed into the great commonwealth it is. There may be propriety in the government, State or Federal, claiming a right to say what every one shall charge for service on the public highways that have been made possible through the exercise of the right of eminent domain and paid for by the public, but the State's relation to public conveyances constructed with private capital must be essentially different. A railroad company, in building its line, avails itself of the right of eminent domain, which right is given for the public welfare, and it must pay for everything it acquires through the exercise of that right, and it must in actual practice pay more than the property used is worth.

Any railroad company will pay very much more than the value of property it desires to use rather than resort to condemnation proceedings. It seems an unwarranted attitude for the State to claim that it has given anything to the railroad company or that the railroad company is indebted to the public or any individual on account of property acquired and for which it has paid the owner's price, or, in case of disagreement, full compensation as determined by his neighbors and as is fixed by the law of the land. The equity of the latter settlement is so well understood and so fully recognized by State and Federal governments that the title secured in either way is held to be equally valid. It is neither reasonable nor honest to set up the claim that in some way the railroad company owes somebody or everybody for property it has legally obtained and fully paid for. It is not now, and never has been, possible at any time to find one member of any legislative body willing to admit that he voted for a law giving the right of eminent domain to railroad companies for the benefit of the roads. He would be mistaken if he did make such an admission. If the right of eminent domain should be withdrawn from the railroad companies, it would greatly enhance the value of railroad securities and very greatly retard the progress and development of the country and its people. The State authorizes the building of a railroad and exercises the right of eminent domain when essential to the proposed construction.

The law provides for compensation where damage is claimed by property owners, and settlements are made in accordance with the law, either by agreement or as determined by judicial proceedings. There are instances other than where the right of eminent domain is exercised when the property of one citizen is damaged by the action of another, and there are instances where one party insures the party of another against damage; and in these instances, where the interested parties disagree, the amount is appraised and fixed by a tribunal legally established as in condemnation proceedings for highway purposes. I believe that in these instances the injured party, having paid the rate fixed by the court of appraisement, has no further claim against the citizen or company held to be liable, and that neither he, nor his neighbors, nor the State can assume, by reason of these grants, any jurisdiction over the business or revenue of the party who pays the damages. When a railroad company condemns

the property of a citizen it not only exercises a right enacted wholly for the public good, but it will be conceded that the public does, as is intended, benefit by the exercise of this privilege. The party whose property is taken is fully compensated through the protection which is properly afforded by the operation of the law; and if, after the transaction is completed, the railroad company can be further indebted to anyone for the property which it has legally acquired, it is impossible that the additional obligation should be to any other person than the one whose property is taken or damaged. The public never had any interest in the property and can not acquire nor honorably claim any interest by reason of any lawful transaction between its owner and the railroad company.

Almost every citizen appears to believe that railroad companies owe the Government something on account of land grants, yet it seems technically and actually true that no railroad company ever received a grant of land either from the State or Federal Government in the sense that is generally understood and accepted. The governments have at different times made bargains with certain syndicates or corporations, upon the fulfillment of stipulated conditions, to turn over to certain railroad companies specific tracts of land. The obligation of the railroad company having been fulfilled, the Government has carried out its part of the agreement. By making these trades the State has repeatedly added to its wealth and population; so it may be said that the Government has not only been a trader in this matter but a good trader. You have doubtless noticed at different times that men, arguing in favor of Government control of railroad earnings because of public land grants, have admitted some confusion of mind because of the circumstance that only a portion of the railroads have had land grants. An understanding of the fact that the State has never presented as a gift any lands to any railroad company eliminates all cause for such confusion while considering this question.

The Government can not only demonstrate readily that it has made very excellent bargains with the railroad companies, but it can further show that it has never delivered to any railroad company a single particle of land that has not been paid for by the railroad company through the complete fulfillment of its obligations as set forth in its contract with the State. I doubt if any citizen who gives the subject sufficient thought or study to know and appreciate the truth will ever claim that the railroad companies are indebted to the State because of the transfer, for an agreed consideration, of these public lands. The average citizen has too much dignity and honor to look with patience or favor upon a person who, having exchanged or sold an article to another, should go about thereafter and say that he had given it, and I am sure everyone wants and expects to see the Government display as much of honor and dignity in its transactions as they would require of an individual member of society.

In relation to private cars and refrigerator lines: These lines generally collect 1 cent mileage both ways from the railroads. This is considered much too high by comparison with the charges which railroads make to each other for interchange of cars, which is now uniformly 20 cents per day. The railroads are willing to admit that these refrigerator cars are entitled to a higher per diem than ordinary freight cars. The refrigerator cars, however, should not be legislated out of existence. The charges should be reasonable

in proportion to the services rendered. I doubt if it is practical for any railroad company to equip itself with a full complement of refrigerator cars sufficient to do its business in season, because after the season is over these cars are practically out of business and are dead capital in the hands of the railroad companies. I am inclined to think that it is better, considering its bearings on rates, that the railroads should have a small complement of these cars ready to meet their daily emergencies, and they should be able to draw from the refrigerator companies for a larger supply in time of necessity. The refrigerator companies can distribute their cars all over the country, meeting the particular seasons' requirements on particular roads, so that the whole matter can be much more economically handled in this way than to require each railroad to have its whole complement of cars. There are doubtless more abuses connected with the refrigerator cars and private car lines, which are too elaborate in detail to enter upon here. These abuses, I think, would be cured if the railroads and private car lines were required to file with the Interstate Commerce Commission copies of their contracts and arrangements with each other and were required to publish with the Commission their rates and charges the same as is now required by the railroads.

In all new and undeveloped countries railroads are welcome. Subsidies in money and land, right of way, and terminals are freely given. The right of eminent domain is not even a factor in this business, so anxious are the people to have them built. After they are built and equipped, then the struggle for supremacy, favoritism, rebates, and special privileges begins. Then the foundation for general demagogy is laid. Railroad oppression is the text from which these agitators preach, in the hopes of riding into office on the current of prejudice they themselves have created and which is their entire stock in trade. If they have the money, not one of them would risk a dollar in any railroad enterprise or contribute a penny toward the upbuilding of the country. Just so long as the thirst for gold, office, political power, and demagogy exists, just so long will the agitation for lower railroad rates, made by whomsoever they may be, continue. Every community demands lower rates than every other community. These demands can not and will not be satisfied by any rate-making power in the country. No class of investors are more entitled to the General Government's protection than railroads. The money for their building originally came mostly from foreign countries; and still, largely, comes from them now. If these investors had ever dreamed that the General Government would virtually take from their legally constituted agents the management of these properties, there would now be few railroads in our great American Republic; and you gentlemen would not be here to-day sitting in judgment upon the millions of other people's property in which the public should have no interest, excepting that all should be treated as nearly alike as the varied conditions of the country and the varied conditions of the different roads would admit. Equal and exact justice to all and especial privileges to none should be the motto of the railroads and the people as well.

In connection with others, I am now having built a Gulf coast line of roads from Houston and Galveston to Brownsville and thence

up the Rio Grande to Fort Ringgold, Tex., and I venture the assertion that outside the cities of Houston, Galveston, and Brownsville there are not now residing, within a radius of 5 miles on both sides of this line, five people to the square mile. If we should charge 10 cents per ton per mile for all the tonnage produced for shipment out of this country we could not even pay one-half the operating expenses of the road. Much of the way we pass through cattle ranches of from 50,000 to 1,000,000 acres each, and there is at present literally no tonnage to move; but by the building of this road, and the development of flowing wells of water, we have made the land so valuable that the owners can sell it for ten times its value before the road was built. We are restricted by the Texas railroad commission to such a low rate of freight that we must be permitted on interstate business to charge all the freight will bear, else how can we protect our investment and help to develop and build up this country? Even if we are permitted to do this the property owner will be benefited from ten to twenty times as much as the railroad investors.

The railroads are the greatest industry in the country, and the only one—with possibly a slight exception—that does not enjoy the protection of the General Government. We are more subject to damage by the elements, mob violence, etc., than any other industry. The people and the General Government are more dependent upon the railroads than on any other one thing, save the products of the farm. The people and their representatives in Congress are so prone to criticise adversely the railroads of the country that no one, save an occasional railroad official or investor, has anything to say in their defense. Why should not public officials in Congress and out of Congress, on the stump and in the halls of our State legislatures, give credit to whomsoever credit is due? Why not make an appropriation and have the Department of Commerce print and send out to every voter in the land the railroad side of this question? If this is done, and the average intelligent voter is made acquainted with the facts in regard to the railroad situation in this country, I have no fear for the result. It is fair to the people and the railroads as well that this be done; and when it is done, and the people understand the situation, the clamor for giving the rate-making power to a Government commission will, in my judgment, cease. Recognize the fact, and tell the people of the great railway systems in the country, and what they have done in the line of progress, education, humanity, and civilization. Why not stimulate the energy and ambition of the young and rising generation by citing to them what has been accomplished by these great captains of progress, courage, and energy? The memory of such men as Edgar Thompson, Tom Scott, Vanderbilt, Jay Gould, Huntington, and many others, long since passed away, as well as those broad-gauged, courageous, and far-seeing railway men of the present day—all these are as much entitled to the respect and gratitude of their countrymen as are our statesmen and warriors of the past and present generation.

I think it will be conceded by all who are familiar with our country's history that but for the railroads in existence in 1861 the Southern Confederacy would have been established. Without the aid of the then existing lines it would have been impossible to have supplied our armies in the field. This was the opinion of many of our ablest

generals. Not only was it absolutely necessary to have these lines of road, but it was also necessary at a very critical period during that struggle for supremacy to call to the support of the Government the great head of the Pennsylvania system to take charge of and direct the operation of all the military lines of road. To his superior knowledge of all matters pertaining to railway operations, coupled with the railways themselves, we are as much indebted as we are to our soldiers and generals for the preservation of the Union. The railways and Tom Scott saved the Union. The railroads must now look to the American epople, through their representatives in Congress, to foster and protect them from injustice, not by a commission with rate-making power, but by the enforcement of the law as it stands to-day, with perhaps some amendments that will suggest themselves to this honorable committee.

STATEMENT OF MR. JAMES KERR.

Mr. KERR. My name is James Kerr, of Clearfield, State of Pennsylvania. I am the president of the Beech Creek Coal and Coke Company and I am also interested in a number of other companies producing bituminous coal in the State of Pennsylvania. I am also the president of a North River coal and wharf company—known as "Port Liberty"—in the harbor of New York. The annual tonnage of bituminous coal of companies I am interested in amounts to between five and six million tons. Our markets for the coal produced are along the lines of the New York Central and Hudson River Railroad, the Pennsylvania Railroad, and their connecting lines, including the Boston and Maine; the Boston and Albany; New York, New Haven and Hartford Railroad, and other lines in New England; steamship bunkering at the ports of Philadelphia, Baltimore, and New York, and water deliveries from these ports. The annual charges for transportation on this coal—this is estimated—will amount to about $8,000,000. I merely mention this to illustrate to this committee the fact that this is an important tonnage, worthy of some consideration in your deliberations.

Senator FORAKER. That makes over a dollar a ton freight?

Mr. KERR. Yes, sir; it is considerably over that—about $1.40.

Senator FORAKER. All right.

Mr. KERR. The coal is largely distributed outside of the State of Pennsylvania.

There are two problems that present themselves to me as important to our business. One is that no other shipper for like product secures a lower rate to same competitive market, and another is, the railroad rate should be commensurate with the necessities surrounding the use of coal, so that the manufacturer who uses our product may be put in a position whereby his cost of fuel may not be relatively excessive, so that he may continue its use. That is, for our markets we are looking to such places as New England and other points that are not favorably situated regarding fuel supply.

It is our opinion if rates are fixed by law through a commission charged with general power they would have to be based on some fixed principle.

There is, apparently, no principle available except a rate per ton per mile. That would mean excessive rates to distant markets, de-

stroy competition, and inflict great injury to many producing interests and seriously affect all business, confining by necessity the producer and the manufacturer to near-by markets.

From the view point of a shipper, I believe the proposition to give the rate-making power to the Interstate Commerce Commission a dangerous experiment that would necessarily result in mistakes against which the public could not be protected. The carriers would suffer if there was injustice to shippers, and the public would be the loser if there was injustice to the carrier. Rates are created by conditions and can not be maintained by men against conditions. Proper rate adjustments are arrived at only by a close study of conditions by those who are daily and hourly in touch with the actual flow of business. The centralization of power in a government of the people is a dangerous thing. The concentration of the rate-making power would, in our judgment, be a menace to the shipping interests.

That is what this means, if it means anything—centralization of power, of rate-making power, which I consider is a very dangerous thing in a government of the people. It is very offensive in other governments; and if the Government undertook the control of the railroads of this country, the power of the Czar of Russia would be trifling as compared with the power of this Commission or any other commission that might be designated for that purpose.

We do not believe the individual shipper is interested in giving to a commission the power to fix a maximum rate for his product. While it is true it might to a small degree limit the injury that could be applied to his business by discrimination in rates, it would not cure the evil.

I have listened to some testimony here on that subject during the last few days, and I do not believe the shippers of the United States, the people who produce, who originate the tonnage, are here clamoring for such a rate-making power. We have complaints to make; we have grievances here and there, and always will have; and the Government could not correct them if it were in absolute control of the rate-making power. I think if it were the agitation would be greater, the unrest would be more, and on the whole there would be more dissatisfaction.

What the originator of a product desires is that no competitor in like product shall have a lower rate to the same market, whether it is by an established open rate or secured through private rebate.

So far as the bituminous coal interests of Pennsylvania are concerned, the question of rebates being allowed to favored shippers is a thing of the past. No such condition exists in the bituminous region, much to the satisfaction of the railroad as well as the shipper. While it is true that the interests of the Pennsylvania shippers of bituminous coal are affected seriously by the southern fields in the competitive market at the Atlantic seaboard and in New England, it is possibly more due to their low cost of production compared with Pennsylvania than anything else.

A fixed rate per ton per mile would destroy this competition. This, no doubt, would be welcome to the Pennsylvania shipper from a selfish standpoint, but it would paralyze the coal business in the southern fields. So this matter in one that the carriers must work out in their own way, which they no doubt will ultimately do. The *all-rail rates into* New England on coal are lower to-day than ever

before, and they are likely to be further reduced because of the conditions in that field, where the coal is consumed, not only to protect the interests of the New England manufacturer, who must have cheaper fuel to enable him to maintain his business in competition with others in like trade more favorably situated with reference to fuel supply, but also to protect the railroads, who must have increased tonnage all rail to protect the increased expenditure due to extension and development which is constantly going on, so that the shippers in the Pennsylvania region are justified in the belief that these matters will ultimately adjust themselves, as the traffic men always are alive to the necessities of trade conditions.

As a shipper, I speak as an individual when I say that Congress should leave the rate-making power where it is, passing such laws as keep the highways of commerce open to all on equitable terms, every surrounding condition and interest being fairly considered. I do not say "equal terms," as our worthy President has phrased it; I say on equitable terms, and you will have to decide what is equitable. That must be left to traffic men, for they are in close touch every day with it, and they only can know. That information could not be absorbed by any commission.

I believe it should be made as much of an offense to accept and receive rebates on the part of the receiver as it is to allow them on the part of the railroad.

Of course I understand that that is the present law, in a sense. What we want to see is that law put in operation, whether these things exist through secret cutting of rates, private car lines, or sidetrack systems. We want protection against any discrimination; we want an open rate, leaving the question of the rate and the rate-making power to the traffic people, who thoroughly understand the situation, and are interested in the development of the localities over which they have control and power.

If necessary, enlarge the powers of the Interstate Commerce Commission to accomplish this and establish courts to facilitate the enforcement of the law so as to give relief as quickly as possible from discrimination when and wherever it exists. To the shipper who has given this subject consideration, it resolves itself into one great question: Should the commercial concerns of this country be willing to allow an experiment to be made that might result disastrously to their business? Where could seven men be secured with the knowledge that is born of contract and association capable of handling the entire railroad traffic of the country now in the hands of thousands of men who have grown up in the service with full knowledge born of experience in their immediate locality and are all able to prescribe for the local ills?

I say "thousands of men"—there are the heads of traffic departments of the great railroads, but they have a large number of assistants. This work is the work of years, and those men are occupied in that work for their lifetime, many of them unknown to the common public; but their opinions on the subject are almost law to the head of the railroad, the traffic department, because they have the experience. and that we can not afford to do without. We can not afford to tear it up.

Even if, on the other hand, the Government was to take control by law and establish a maximum rate, either for a definite haul or per

ton per mile, the bituminous coal industry is not in a condition financially—I speak for our own business—to bear any such experiment. It may be said that it is not the intention to take so radical a step, but it is leading in that direction. It is our belief that the Government can not afford to undertake the fixing of the income or revenue of its citizens and their enterprises without morally involving it with an obligation for their liabilities. The rates generally are sound in their adjustment. This is proven by the dissatisfaction of various regions caused by their inability to secure a basis of rates that will permit them to eliminate competition. Railroads, as well as the public, suffer by rate discrimination, and any law that will prevent it will be encouraged by all except those who are receiving or hoping to receive these unlawful favors. Both the railroads and the public hope that Congress will enact sufficient laws, if the present are not adequate, and provide means for their speedy enforcement.

If the means are not adequate or are inoperative, make them operative by some more well-defined plan or method; provide means for their speedy enforcement. That is my idea of this question; and I think the rate-making power should be left as it is.

Senator CULLOM. You come here from Pennsylvania, you say?

Mr. KERR. I come here from Pennsylvania, as a shipper.

Senator CULLOM. You are in the coal business?

Mr. KERR. In the coal business.

Senator CULLOM. Did you come down on your own account?

Mr. KERR. On my own account.

Senator CULLOM. To give expression to your views before the committee?

Mr. KERR. Yes, sir; on my own account. It is true that the matter has been discussed among us up there who are interested in this problem, and it seemed of importance enough for me to say that I would come down and give my views.

Senator CULLOM. What is the general feeling in reference to the matter in your section of the State?

Mr. KERR. So far as rates are concerned?

Senator CULLOM. On this general question of giving the Commission the power to make rates under certain circumstances.

Mr. KERR. So far as I know about it—I only know of those who are concerned in it as originators of products to be shipped—they do not believe that the rate-making power should be put in the hands of the Government.

Senator CULLOM. That class of people agree with you?

Mr. KERR. They do. There are always some who have grievances, and always will have. I do not recall any just now, but I have no doubt that, as has been indicated here to-day, there are sentimental organizations of one kind and another in the State of Pennsylvania the individual members of which are not much interested in this problem and see great cause for grievance, and that might impress a body like this with its power and influence. But the facts are that the producers of tonnage, the people who are concerned in it, who are affected by it, are not in favor of the rate-making power being put in the hands of any different body from that which now exercises it.

Senator CULLOM. You are disposed to stand by the law as it is?

Mr. KERR. We feel that that is best.

Senator CULLOM. Are there no rebates in your section?

Mr. KERR. No. I speak of the coal business because I know all about that. There are no rebates paid to coal shippers in our region that I know of, and I do not think there are any.

Senator CULLOM. Are there any unjust discriminations between individuals or localities in your section?

Mr. KERR. There has been some complaint in that direction on the line of the Pennsylvania Railroad—complaints of discrimination on the car question, the distribution of cars, percentages. There is more or less of that. There is none on the New York Central, where most of my tonnage originates. The cars are distributed on a percentage basis, and I think all the shippers would testify, if they were here, that there were times when all of us complained of not getting cars enough. But, take it as a whole, at the end of the year we have been as fairly treated as we could expect. But the railroads have been very short of equipment, both of cars and of motive power to move those cars after they were loaded; and we have all suffered seriously from the inabality of the railroad to move the tonnage we have provided for shipment.

Senator FORAKER. You produce and ship something over 6,000,000 tons annually?

Mr. KERR. Yes, sir; about 6,000,000.

Senator FORAKER. Do you send any of that to the Western States?

Mr. KERR. No, sir.

Senator FORAKER. You do not ship to Chicago?

Mr. KERR. We have no rate that would allow us to ship to Chicago.

Senator FORAKER. Nothing goes west; all goes east?

Mr. KERR. All our coal goes east; we are in the Allegheny Mountains.

Senator FORAKER. And you do not complain that the rates are too high, or about rebates or discriminations?

Mr. KERR. We do not want rebates. I feel that if there were rebates allowed there would be an uncertainty in my business that I could not afford to have in it; because if I got rebates, somebody else might get more than I did, and put me at a disadvantage without my knowledge, and therefore injure and hurt and retard my business. But if you have one fixed rate for all alike, we know where we are at, and can guide ourselves accordingly.

While it is true to-day that there are sections where we deliver our coal and feel that the rate is too high, and the price that we are able to obtain for our product will not justify that rate, yet that is the condition we will have to accept; and we will await such time as the rate can be adjusted to meet our conditions. We are brought in contact with the southern fields, as I indicated a while ago, and the rate to tidewater there is $1.35, while with us the rate to Philadelphia is $1.20. Their haul is longer than ours. If there was a rate per ton per mile, ours would be much less; and that is a very severe competition for us in New England, because of their low water rates and their low cost of production.

Senator FORAKER. Do you export coal?

Mr. KERR. We export coal to Cuba only.

Senator FORAKER. Only to Cuba?

Mr. KERR. We send coal to Philadelphia, and by a vessel to New England—Boston and Fall River and Portland.

Senator FORAKER. Transportation to Cuba belongs in our coastwise trade, of course?

Mr. KERR. Yes, sir.

Senator FORAKER. We have not any outside competition. That is all.

STATEMENT OF MR. F. L. MITCHELL.

Mr. MITCHELL. My name is F. L. Mitchell, of the Mitchell & Lewis Company, better known as the Mitchell Wagon Company, of Racine, Wis., manufacturers of wagons. I will only take a few minutes of your time, gentlemen, because I realize the necessity of your getting through.

I want to preface my few remarks with the statement that I believe the passage of the Cullom bill and its amendments, with the Elkins law as passed, were good things—good for shippers, good for everyone, and especially good, as I believe from my personal knowledge, for the railroad companies. But from a manufacturer's standpoint I believe it is, to say the least, unnecessary at the present time to pass any further laws bearing on the railway-rate question, or to give the power of fixing rates to the Interstate Commerce Commission or to any other commission that may be appointed.

I want to make one exception to that statement, and that is as to the private car and the private side track or terminal facilities proposition, as it may be termed. I believe both of them, and especially the terminal side-track matter, could be made of great injustice to the shippers—to the manufacturers—and would be the means of giving some undue preference over others. That, I think, is readily appreciated.

The city of Racine, where my company is located, is some 63 miles north of Chicago, and about 23 miles south of Milwaukee.

Senator FORAKER. You are right on the lake, are you not?

Mr. MITCHELL. We are right on the lake; yes, sir. We manufacture farm and spring wagons—farm wagons especially; they are our main product. We do solely an interstate business. We get all our freight from States outside of our own.

Senator FORAKER. What is the amount of that business, if you can tell us?

Mr. MITCHELL. Our out-freight is in the neighborhood of 1,000 cars annually. The in-freight is about the same, I should say.

Senator CLAPP. And you ship all over the country?

Mr. MITCHELL. Yes, sir; we ship to nearly every State of the Union, with the exception of, possibly, the States of Maine, New Hampshire, and Vermont, up in the northeast corner.

I will not go into the details of our business, but I will simply say that the Mitchell & Lewis Company has been organized now for something over fifty years. Of course it stands to reason that I have not been connected with the institution for that length of time, but I know of the business that has been done by the company since the interstate-commerce law went into effect and for some time before that. I know of that personally, and I know that our company has never had to ask the assistance of the Interstate Commerce Commission in the regulation of any of our rates; and I know, further, that there is no one institution in the city of Racine, which is composed

almost entirely of manufacturing interests, that ever brought an action or made a complaint to the Commission of any unjust rates.

Senator CULLOM. You have always gotten along without it?

Mr. MITCHELL. We have always gotten along without it, Senator; yes, sir. We have always arranged our own rates with the railroads, and have found, as a rule, that they are willing to meet us on any reasonable proposition. We have not always been able to get all we ask, and we never expect to; but there are changes and complications constantly coming up in a business of that nature.

For instance, we use a large quantity of lumber and wood stock in wagons, and the producing centers for that class of material are constantly changing. Those rates have to be arranged to meet the conditions. I could cite particular instances, but I do not think it is necessary, unless you desire to have them brought out.

The railroads and the shippers or the manufacturers are in touch with each other, and I have found by experience that the traffic men of the railroads sometimes know the needs of the manufacturers better than the manufacturers themselves; and they have adjusted certain rates unsolicited on the part of the manufacturers. I do not mean to say that this has been done by any secret rebates or underhand means of any kind; it has been done by open tariff.

The question that comes to me is whether the railroad companies would be as ready and willing to grant those concessions if the power to fix rates were taken away from them and given to a commission. I believe not.

We hear it said that there is a popular demand for railway legislation. That is supposed to be so in the State of Wisconsin.

Senator CULLOM. According to the vote there, it is so, is it not?

Mr. MITCHELL. According to the vote it would seem so, Senator, surely; but I think it does not come from the business men—I think it does not come from the men who are posted. I was just going to say that if that is so I believe such a demand comes from a misunderstanding of the conditions as they exist in the making of the average rates of the country. I believe that that popular sentiment has been worked up by holding up a few shining examples; and the holding of those examples has worked to the detriment of the other business interests of our State.

Senator CULLOM. Have you any of those shining examples in mind?

Mr. MITCHELL. They are public property, I think, Senator. I do not believe it is necessary to cite instances, unless you wish me to.

Senator CULLOM. Oh, no; it is not necessary.

Mr. MITCHELL. I think we all know what concerns are meant. They are not competitors of ours; I will say that.

Senator CULLOM. Are they business men?

Mr. MITCHELL. I should think they were. I think they are first-class business men.

Senator CULLOM. The reason I make that inquiry is because we have heard a good many business men from different parts of the country, and I have almost forgotton if we have ever heard anybody who complained of the railroads or favored additional legislation.

Mr. MITCHELL. Yes. Well, I understand that you want all of the different ideas on this thing. If I had not understood that, of course I should not have asked to appear before the committee. I supposed

that you wished to have the manufacturers and the shippers express themselves, whether they were coming here with a complaint or not.

Now, there may have been cases of injustice, and it is natural that there should be with such a vast business as is being handled. But with the private sidetrack and the private car proposition eliminated, as I believe they will be, I am willing to take my chances with the railroads, working under the present laws, and subject to investigation by the Interstate Commerce Commission, acting under the powers given them in the present laws.

Gentlemen, that is all of my statement.

STATEMENT OF MR. EDWIN SMEDLEY.

Mr. SMEDLEY. My name is Edwin Smedley. I reside in Dubuque, Iowa. I am general manager of the Smedley Manufacturing Company, of Dubuque.

Senator FORAKER. What is your business?

Mr. SMEDLEY. We are manufacturers of steam-pumping and power-pumping machinery, fire apparatus, and waterworks supplies generally.

Senator CLAPP. What is your output and tonnage?

Mr. SMEDLEY. Approximately, 5,000 tons a year. A great many of our shipments are not made in carloads. They go in less than carloads, excepting in cases of complete waterworks plants, where we run sometimes as high as 30 or 40 carloads of pipes and machinery, building material, and so on.

Senator CLAPP. Is the pump business quite an industry at Dubuque?

Mr. SMEDLEY. Yes, sir.

Senator CLAPP. Are there a number of concerns there?

Mr. SMEDLEY. Yes, sir.

Senator KEAN. That is the home of Senator Allison, is it not?

Mr. SMEDLEY. Yes, sir; the home of Senator Allison and Colonel Henderson.

Senator CULLOM. Go ahead and say what you wish to say.

Mr. SMEDLEY. I had intended to read a statement to you, but I will not do so; I do not think it necessary for so many of us to go into railway statistics. I think you have had enough of that. It does not make a great deal of difference to us what it costs to build these railroads or what their revenues are or what their profits are. The main thing with us as shippers is, Are we getting fair treatment? And I am instructed by my company and urged by my friends who are manufacturers—not a lot of sentimental fellows or sentimental organizations; not a gang of men who have not a dollar invested and are ready to howl for a 1-cent stamp rate on a car of stuff, if possible—to say that we are. It is simply a question with us whether or not we are getting fair treatment at the hands of the railways; and I am here, gentlemen, for the purpose of saying to you that for twenty-five years we have not had a single serious grievance, not one serious complaint. Little matters have come up, but they have always been readily, promptly, and cheerfully adjusted by the railway officials; and we have never been under the necessity of calling into requisition the railway commission, nor do we believe a railway commission is necessary at all. As manufacturers we would rather deal directly with the railway companies.

Senator FORAKER. Have you any complaints to make before us of discriminations against you by the railroads in the prosecution of your business?

Mr. SMEDLEY. None whatever.

Senator FORAKER. Let me call your attention to a statement made yesterday by the governor of your State, Governor Cummins. Being asked a question which seemed to him to call for a definition of the discriminations he had been talking about, he made this answer:

Dubuque wants to send pumps, we will say, to a point 50 miles away, in Wisconsin. Now, it costs the Dubuque manufacturer a little more to produce his article than it does the Chicago manufacturer, because he is farther away from the raw material. He has had to put his raw material into Dubuque. He goes to this point and he finds that there is the same rate on pumps from Chicago, 200 miles away, that there is from Dubuque, while the Chicago manufacturer can produce his article a little cheaper. That is the discrimination I complain of.

What have you to say about that?

Mr. SMEDLEY. I do not know; I do not know of the existence of anything of that kind. I am under the impression that the Governor is visionary on that point.

Senator FORAKER. Does the governor manufacture pumps?

Mr. SMEDLEY. No, sir; and I do not think he ever shipped anything or ever manufactured anything. I heard him yesterday.

Senator FORAKER. You were here, were you, when he spoke of that?

Mr. SMEDLEY. Yes, sir.

Senator NEWLANDS. Is there anybody else there who manufactures pumps, at Dubuque?

Mr. SMEDLEY. Yes, sir; but not the same type. Ours are steam and power pumps. The other pump manufacturers there manufacture hand pumps and wind pumps.

Senator NEWLANDS. Do you know about their business?

Mr. SMEDLEY. Yes, sir.

Senator NEWLANDS. Could you say, then, that what the governor states is not a fact as to their business?

Mr. SMEDLEY. I say I do not know of anything of the kind; I doubt it.

Senator FORAKER. You are in a situation to know about it if any such thing existed, are you not?

Mr. SMEDLEY. I am personally acquainted, in fact very friendly indeed and hobnob a good deal with, the manager of the A. Y. McDonald & Morrison Manufacturing Company. We are within a stone's throw of each other, and we are together daily, and I have never heard a single complaint from Mr. Morrison.

Senator FORAKER. How long have you been in business there?

Mr. SMEDLEY. About twenty-five years.

Senator FORAKER. What amount of business do you do per annum?

Mr. SMEDLEY. Do you mean in dollars and cents?

Senator FORAKER. Yes.

Mr. SMEDLEY. About $150,000 in the steam-pump line; that is, outside of waterworks contracts.

Sometimes one of our waterworks contracts amounts to that much alone; but that is the output from the machines in steam-pump matters.

Senator FORAKER. Where do you ship your pumps to? Where do you sell them?

Mr. SMEDLEY. The last shipment—I will not say the last shipment—but a recent shipment was made to Hai-ning, China. We ship all over this country.

Senator FORAKER. You ship all over this country?

Mr. SMEDLEY. Yes, sir.

Senator FORAKER. Using all the different railway routes?

Mr. SMEDLEY. All the different railways that run to Dubuque.

Senator FORAKER. Do you sell any of your product up in Wisconsin, 50 miles away from Dubuque? I mean, have you trade up in that direction?

Mr. SMEDLEY. Yes; we ship in Wisconsin. We put in a waterworks plant in the town of Cassville, Wis., not long ago—a complete plant, building, reservoir, pipe line, machinery, and everything.

Senator FORAKER. Where you put in a waterworks plant you have to ship material, and all that sort of thing, I suppose?

Mr. SMEDLEY. Yes, sir.

Senator FORAKER. Now, as to this other concern you speak about, with the president of which you are so well acquainted—what amount of business does it do annually, if you know?

Mr. SMEDLEY. I can not say positively, but I am satisfied that it is fully ten times as much as ours. It is a much larger concern.

Senator FORAKER. And you have never heard of their making any complaint?

Mr. SMEDLEY. Not a single word.

Senator FORAKER. Are you satisfied with the reasonableness of your rates?

Mr. SMEDLEY. Quite satisfied.

Senator FORAKER. Have you any complaints on account of rebates?

Mr. SMEDLEY. We never had a rebate. We have never asked for nor accepted nor talked to the railroad companies about rebates.

Senator FORAKER. We were told by the Governor yesterday that for some reason or other the manufacturing industries of Iowa have not flourished as he seems to think they should have flourished. What is your judgment on that question?

Mr. SMEDLEY. It is my opinion, gentlemen, that every manufacturing plant that has been a failure in the State of Iowa, as I have known of them, has failed almost entirely by reason of mismanagement, and not from the fault of a railroad company or any other person than themselves. When we started our plant we bought land enough on which to build a large plant; and lying between that and the railway tracks was a waste country that was overflowed a portion of the time by the rise of the river. We asked the railroad company to help us, to give us a side track. We stated that we had gone into the suburbs in order to have more room, better facilities, and we told them that we needed a side track. The railroad company built a track through that waste land at its own expense to supply us. We were able to load and unload cars in our own yard. Since that time the Chicago and Great Western Railway Company have built through Dubuque and touched our ground. That gives us two lines now. But most of our material—that is, coal, for instance—comes to us on the Illinois Central Railway. We have no trouble whatever in getting switching done. There is a nominal switching charge for each car transferred from one line to this one that has the side track, and we think it extremely reasonable, because they bring that car to us

or less than one-tenth what we can carry it across with our own ams for. We have no reason to complain at all.

Senator FORAKER. Mr. E. P. Bacon, who made a statement to the ommittee a few days ago, put in evidence a petition addressed to ongress which is signed by numerous trade associations, and I find nong these signers a number from Iowa—one the Dubuque Shippers' ssociation, W. B. Martin, Dubuque, Iowa. The complaint to which at name is signed is one in which it is set out that they protest gainst unreasonable and extortionate rates and against discrimina-ons. Can you tell us anything as to what moved that association to in in such a memorial to Congress?

Mr. SMEDLEY. I never heard of it.

Senator FORAKER. Do you know W. B. Martin?

Mr. SMEDLEY. I do not know him, and I have been in Dubuque for irty-four years.

Senator FORAKER. What is the population of Dubuque?

Mr. SMEDLEY. The population of Dubuque, according to statistics, 36,000.

Senator FORAKER. And you have been in it ever since it was how rge a place?

Mr. SMEDLEY. When I went there Dubuque had only 18,000 in-abitants.

Senator FORAKER. And now it has 36,000?

Mr. SMEDLEY. Thirty-six thousand.

Senator FORAKER. And you do not know W. B. Martin?

Mr. SMEDLEY. I do not know him.

Senator FORAKER. And you do not know the Dubuque Shippers' ssociation?

Mr. SMEDLEY. I do not even know of that society. There are a ood many visionary or sentimental societies around in these days, f course. Our office was flooded with a lot of literature a little hile ago, and, in fact, that led to my coming here; we were flooded ith circular letters from Des Moines.

Senator FORAKER. The name of the Des Moines Commercial Ex-hange is signed by A. C. Hutchins. Do you know anything about at?

Mr. SMEDLEY. That was the name; yes, sir.

Senator FORAKER. What is this Des Moines Commercial Ex-hange? Can you tell us something of the character of that organi-ation?

Mr. SMEDLEY. God knows; I do not.

Senator FORAKER. The Oskaloosa Commercial Club, Charles Hu-er, Oskaloosa, Iowa—can you tell us anything about that?

Mr. SMEDLEY. I do not know much about Oskaloosa, but I assume at it is after the same order of institution.

Senator FORAKER. Well, this is rather interesting. Chariton, Nox-ll Club—Walter C. Gookin, Chariton, Iowa.

Mr. SMEDLEY. I do not know him.

Senator FORAKER. The Cedar Rapids Commercial Club, A. N. almer, Cedar Rapids—you do not know anything about that?

Mr. SMEDLEY. I do not know anything about that.

Senator FORAKER. Here is another one you ought to know about. he Iowa State Manufacturers' Association, A. C. Hutchins, Des

Moines, Iowa, and W. W. Marsh, Waterloo, Iowa—do you know any of them?

Mr. SMEDLEY. That is the one that flooded our office with printed matter and circular letters. That is the name of the society and the name of the man.

Senator FORAKER. They seem to have been so anxious to sign that they signed it twice.

Mr. SMEDLEY. I doubt very much its existence, further than it may be in some office somewhere.

Senator FORAKER. The Iowa Grain Dealers' Association and George A. Wells, Des Moines, Iowa—do you know anything about that?

Mr. SMEDLEY. I do not know anything about that.

Senator FORAKER. The Corn Belt Meat Producers' Association of Iowa, G. W. Maher, Fort Dodge, Iowa, and Frederic Larrabee, Fort Dodge, Iowa?

Mr. SMEDLEY. I do not know. I am not very well acquainted there, although I have been in Fort Dodge a good deal.

Senator NEWLANDS. How far is Fort Dodge from you?

Mr. SMEDLEY. Approximately 200 miles to the west.

Senator FORAKER. The fact of these numerous associations signing in this way would seem to indicate that there was a good deal of sentiment out there in support of this petition. I understand you to say that you have not heard of any of that sentiment at all?

Mr. SMEDLEY. No, sir. I do not know of a single individual in Dubuque, a single shipper or manufacturer in Dubuque, who has expressed anything except a good deal of contempt for the idea of making an effort to cripple our best friends—the railroads; to hamper them, to do anything that would reduce their revenues that they need for the maintenance of first-class equipment.

Senator FORAKER. Are you interested in any way in any railroad?

Mr. SMEDLEY. Not at all, sir.

Senator FORAKER. You speak entirely from the standpoint of a shipper?

Mr. SMEDLEY. From the standpoint of a shipper; yes, sir.

Senator FORAKER. And a citizen?

Mr. SMEDLEY. Yes, sir.

Senator FORAKER. What have you to say about distance rates, if you understand by that what I mean—fixing the rate at so much per ton per mile? Have you ever given that any consideration?

Mr. SMEDLEY. I have.

Senator CULLOM. The Iowa law?

Mr. SMEDLEY. I have; but I have always felt that there was a good deal of time lost in working it out or thinking about it. Our method has been this: In the case of a carload shipment, or a shipment of any kind, the great bulk of our work goes to the Gulf States, to the sugar houses—sugar-house pumping machinery—and whenever we have an order to equip a sugar house we simply ask the railway company what is the rate to that point, and they say, "We will let you know." In a little while we are rung up, and they give us the figures. We size up the rate, compare it with the value of the machinery, and have always found it reasonable; and we go no further.

Grievances have come up, of course, but not through overcharges, with us. We have had some grievances arising from damage to ship-

ments from accident, derailment, or something of the kind, the carelessness of employees; but invariably they have been settled by the railroad company promptly and satisfactorily.

Senator FORAKER. You are situated right on the Mississippi River?

Mr. SMEDLEY. Yes, sir.

Senator FORAKER. Do you ship much by the river?

Mr. SMEDLEY. No.

Senator FORAKER. To these sugar plantations?

Mr. SMEDLEY. No; we never make a practice of it, for the reason that during a good part of the year the river is not navigable. In extremely low water it is hardly safe to send anything, and in the winter time the river is frozen.

Senator FORAKER. Do you think water transportation there has any effect on railroad rates?

Mr. SMEDLEY. Not with us; sometimes, in high water, in the case of a cargo of pipe coming from St. Louis, or something of that kind, we use the river; but it does not happen once a year.

Senator FORAKER. Have you any complaint to make of rates charged on intermediate points between you and Chicago?

Mr. SMEDLEY. No, sir; none whatever. We are perfectly satisfied, and we sincerely hope, gentlemen, that you will let the railroad officials and us fight it out, and if we do not succeed let us go into the district court with it. It seems to me that the railroad officials and the shipper can agree if they are both fair-minded; and if one of them is not, why, the court decides it.

Senator FORAKER. You have confidence in the courts?

Mr. SMEDLEY. I have every confidence in the courts. I think they are the only tribunal that we need to assist us—to take us apart when we have locked horns. The Commission, I think, is entirely uncalled for. It has certainly never been needed in our transactions with the railroad companies.

Senator FORAKER. The tendency of freight rates has been downward all these years that you have been in business, has it not?

Mr. SMEDLEY. There has been a steady, gradual, easy decline.

Senator FORAKER. Do you think that would continue if the Government were to interpose and fix a maximum rate to be charged?

Mr. SMEDLEY. Well, I am afraid, gentlemen, that it is an experiment, and I do not think it a good time to experiment when you are doing well. I believe in letting well enough alone.

Senator FORAKER. I want to get the benefit of your opinion as to what would occur if the railroads were to be told by the Government: "You can charge so much over this line. Here is a maximum rate which we name." Do you think there would be the same competition afterwards—I mean, the same disposition to reduce rates that there has been?

Mr. SMEDLEY. I would rather leave it with them. I do not think a fixed rate is a good thing at all. I would rather leave it flexible, as it is, to be adjusted by the railroad company. We can say to them now, "We have a pretty sharp competition with Chicago; do the best you can for us." I do not think there is any discrimination at all in giving us a little assistance in that way. It is a businesslike proposition; it is not a matter of rates.

Senator CULLOM. You ask them to give you a little assistance?

Mr. SMEDLEY. Give us a little assistance, if possible; yes, sir. I think that is all right.

Senator CULLOM. But not your competitor?

Mr. SMEDLEY. Not to the injury of that man, though, Senator, but to our help a little, if possible. If they say they can't do it, all right; if not, we will go and fight for the business anyway, and we generally get some of it.

Senator FORAKER. You believe in equality as between shippers from the same point to the same point?

Mr. SMEDLEY. Yes, sir.

Senator CULLOM. Mr. Smedley, I rather infer from your remarks that you do not think there is any necessity for any law governing the railroads at all. How is that?

Mr. SMEDLEY. I do not mean to say that. I say the courts are sufficient—that is, the law.

Senator CULLOM. Yes; I know you say the courts are sufficient. The courts would exist if we had no interstate-commerce act, would they not?

Mr. SMEDLEY. I said I did not think a commission was necessary.

Senator CULLOM. You think the Commission that now exists ought to be abolished, do you?

Mr. SMEDLEY. I think it would be better if it were abolished.

Senator CULLOM. You do?

Mr. SMEDLEY. I do, indeed.

Senator CULLOM. And rely upon the courts?

Mr. SMEDLEY. Yes, sir—rely upon the courts and the railway officials, on fairmindedness among men.

Senator CULLOM. You think the interstate-commerce law, including the Elkins law, ought to be repealed?

Mr. SMEDLEY. Well, it is not absolutely necessary to repeal them; but I do not believe in extending their powers. It would be well if the Commission never had been created; but as it is, I think I should let it stand without increasing its powers.

Senator CULLOM. You say it would be better if it never had been created at all?

Mr. SMEDLEY. I think it would be better; yes, sir; to leave it with the railroads and the courts.

Senator CULLOM. You are rather at the extreme, are you not?

Mr. SMEDLEY. Yes, sir; I believe the courts are sufficient.

Senator FORAKER. I am not disputing that; but what I am getting at is whether you think the interstate-commerce act, or any portion of it, is necessary at all?

Mr. SMEDLEY. I do not think it is absolutely necessary.

Senator FORAKER. You would rather have it all repealed—wiped out?

Mr. SMEDLEY. I would rather be left alone in my business to deal with the railway officials.

Senator CULLOM. You never have had anything to do with the Commission, have you?

Mr. SMEDLEY. Not further than to make reports.

Senator CULLOM. I am talking about the Interstate Commerce Commission.

Mr. SMEDLEY. Oh, no; no.

Senator FORAKER. They have never been in sight of your town, have they?

Mr. SMEDLEY. Never; never.

Senator CULLOM. You never have called on them to do anything for you?

Mr. SMEDLEY. Never; we have never had occasion to.

Senator CULLOM. And you have gotten along all right, as I understand?

Mr. SMEDLEY. Yes, sir. I believe that if a man is fair-minded with a railway company he will have no trouble with it.

Senator CULLOM. If the man is fair-minded and the railway company is fair-minded, they certainly ought to get along all right.

Mr. SMEDLEY. Yes, sir.

Senator CULLOM. But sometimes one or the other gets a little bit crosswise.

Mr. SMEDLEY. Sometimes an employee in a freight department becomes a little impudent, or something of that kind. Now, we simply do not talk to him; we just appeal to a little higher authority, and the gentleman is sometimes taken by the ear and taken out. We have known them to be let out and somebody else put in. A railroad company should not be condemned on account of the impudence of an employee, or on account of the forgetfulness of the switchman, or an accident.

Senator CULLOM. When you say a subordinate is impudent, and see the proprietor about it, he dismisses him?

Mr. SMEDLEY. I think that is the right way. I do not think it requires a commission from Congress to do that.

Senator CULLOM. Where do you get your coal from?

Mr. SMEDLEY. We get our coal—I was a little surprised at Mr. Cummins yesterday—we get our coal from Illinois. We get a better coal, and cheaper.

Senator CULLOM. Perhaps that is what he is complaining of.

Mr. SMEDLEY. Well, it is really a fact that the Illinois coal is better than our Iowa coal. I am very sorry that that is the case, but it costs us just the same from Illinois as it does from Ottumwa, and we find the quality a little better. Nature seems to have done a little more for Illinois in that line than for us—that is, so far as developments have gone. We still hope that Iowa has a better quality yet. We have not found as good coal yet as we find in southern Illinois.

Senator CULLOM. That is all.

Senator NEWLANDS. Suppose all the railroads coming into Dubuque and going out of it were consolidated under one system. Would you then think there would be no occasion for a tribunal that would determine disputes between the shippers and the railroads?

Mr. SMEDLEY. I do not think it would be necessary, for this reason: If one company owned and operated the four trunk lines now centering in Dubuque—namely, the Illinois Central, the Chicago, Burlington and Quincy, the Chicago and Great Western, and the Milwaukee and St. Paul—the operating expenses would be less; there would be one set of officials—one freight agent instead of four, one traffic man instead of four—and other reductions of a nonproducing force of such a character that we think we would get a little better rate.

Senator NEWLANDS. You do not think that if this combination had

the entire monopoly of transportation there it would either increase the rates or maintain them without reducing rates as business increased?

Mr. SMEDLEY. While I do not think there is a possibility of their ever being merged, I should not be afraid to take my chances with them if they did merge.

Senator NEWLANDS. And you would not, even in that event, desire any regulating power?

Mr. SMEDLEY. No, sir; only the court. I think the district court is sufficient.

Senator NEWLANDS. And there you would have your remedy in a suit for damages?

Mr. SMEDLEY. There is where I would have my remedy in a suit for damages, right there on the spot, without having to send to Washington or elsewhere for it.

STATEMENT OF MR. G. W. TRAYER.

The CHAIRMAN. What is your occupation and place of residence?

Mr. TRAYER. I live in Chicago; I am engaged in soft-coal mining in Illinois and in Iowa.

The CHAIRMAN. What is the extent of the shipments you make in a year?

Mr. TRAYER. We mine from 750,000 to 1,000,000 tons a year.

The CHAIRMAN. Coal?

Mr. TRAYER. Soft coal—yes; more than one-half of which is now handled from Illinois.

The CHAIRMAN. You may make your statement as you see fit about the question before the committee.

Mr. TRAYER. I will say, Mr. Chairman, that I am speaking entirely for myself, although I have conversed on this subject with numerous friends, and my coming here was at the suggestion of several of them, and I wish to make my statement, not with the idea of instructing the committee at all, but merely to express to the committee my idea of the general principles as I understand them.

This subject of regulating railroads is, to my mind, the most important to business men of all of the subjects now before Congress. I think it is more vital to the people than the protective tariff. I think it is next in vital importance to the monetary standard and to the monetary system, because it affects practically everything that the people use. I believe that to everybody engaged in business or possessing property, or who wishes to retain any hope in either direction it is more important that this question should be dealt with correctly than that it should be dealt with quickly.

I believe that business men generally wish to have the bottom touched in the investigation of this matter before any experiments are made in applying treatment by legislation. I hope you will bear with me in making these statements, because I dare say you realize that yourself, but perhaps you will not be averse to learning that there are also some people in the country who realize it.

Judging from my own experience with maximum-rate laws and rate schedules which have the force of law, and rigid long and short haul or mileage-rate laws, I have found them to be more harmful than beneficial to shippers; but my experience has been with the Iowa law and the Illinois law entirely. Iowa has both the maximum-

rate schedule and the mileage-rate law, and the result has been that neighboring or competitive States not under those same disabilities have gained steadily at Iowa's expense. I have been engaged in soft-coal mining in Iowa for seventeen years. During that time the relative importance of the Iowa coal business has declined steadily. The entire tonnage of the State is now but little larger than it was seven or eight years ago; and going back to the panic of 1893 it is but little larger than the maximum had reached in 1892. Going back to 1892, the coal tonnage of the State of Illinois has more than doubled, or, we will say, from fourteen or fifteen millions to thirty-five or thirty-six millions. The Iowa tonnage is now probably six or seven millions at the maximum, and in 1892 it was between five and six. I believe those figures will be found on investigation to be correct.

Instead of being manufactured at home with Iowa coal, Iowa corn and live stock are mainly sent out of the State, where Iowa coal can not naturally reach the manufacture of them, or it is prevented in part by the same rate disabilities which sent the corn and the live stock away. Missouri and Kansas coal go into Omaha on as favorable terms and relatively more favorable terms than Iowa coal does, and Missouri and Kansas coal go clear up to Sioux City on relatively more favorable terms. I am not speaking of absolute rates; I am speaking of relatively more favorable terms.

The smaller manufacturers of iron and steel articles in Iowa, like machinery, that uses partly pig iron and partly scrap iron, have either been killed off or have merely maintained a precarious existence, while they flourish reasonably well in Wisconsin and in Illinois. In Wisconsin, to my personal knowledge, in places like La Crosse and Milwaukee, those manufacturers are rasonably prosperous; and in Illinois, at places like Moline, and Rock Island, and Springfield, and Litchfield, and other interior cities of Illinois, they are able to maintain a fairly prosperous existence. I am not able to say how prosperous, but I know that we can always buy mining machinery of them, and that they are manufacturing good machinery, and that the same men, or the same concerns from which we could buy years ago we can still buy from, and their plants have grown. In Iowa I know of quite a number of plants that have passed out of existence. At Ottumwa and at Des Moines and Burlington they maintain a precarious existence. I do not know as much about Dubuque, although I know that two years ago I bought a pumping plant or mining plant of the Iowa Pump Company, or Iowa Iron Company, and since that time the Iowa Iron Company has gone out of existence.

Mr. SMEDLEY. Let me correct you there, please. It has gone out of existence under that title, but it is now running under the name of the Tower Manufacturing Company.

Mr. TRAYER. We are unable to get the same class of stuff from it.

Rates in States widely apart in any article of general use are so intimately related that the variation of one such rate almost always causes, and probably in most cases in conformity to natural commercial laws it should cause, a variation of one or more of the other rates. With a multiplicity of State commissions and State laws this operation of natural law would be prevented, or at the least very greatly hindered and obstructed.

If shippers within the jurisdiction of each particular commission

are to be protected by that commission, the actual making of rates by a commission tends in the end toward, if it does not necessarily result in, the making by each commission of all the rates within its jurisdiction; and this would, to my mind, be equivalent to Government ownership so far as the shippers are concerned, at least.

Now, with your permission, I would like to illustrate briefly in the soft-coal business this interrelation of rates in widely separated places. Soft coal is mined in western Pennsylvania, in Ohio, in Indiana, in Illinois, in Iowa, in Missouri, and in Kansas. All of it to some extent goes into common competitive territory, which is comprised in that part of certain States like those west of Chicago and north of the latitude of Peoria and substantially east of the Missouri River. If you touch a rate from, say, southern Illinois to St. Paul and Minneapolis, or territory in that general vicinity, and change it materially, there will be an almost irresistible demand made for a change in other rates, or at least it will affect them. It can not but affect the Indiana, the Ohio, the Pennsylvania, and the Iowa coals as well. That is one illustration, and I have felt it was sufficient to take up your time in illustrating the interrelation of rates and the collateral results of changing a rate by a commission.

It is my belief that the self-interest of the railroads, regulated by natural facts and commercial principles, will govern the railroads effectively if prompt and easily securable and summary remedies are provided against positive injustices, and against discriminations that are based on personal and selfish motives. That involves the maintenance of competition between railroads, of course. Without competition, these laws could not have any effect.

Senator NEWLANDS. These commercial laws could not have any effect?

Mr. TRAYER. These commercial laws could not have any effect.

The CHAIRMAN. How does the coal of Iowa compare with the coal of Illinois?

Mr. TRAYER. It is not quite as good, as a general rule. There is a variation in quality within each State. The best coal of Illinois is better than the best coal of Iowa. The best coal of Iowa is somewhat better than the poorest coal of Illinois.

Senator CULLOM. Whereabouts in Illinois do you get your coal?

Mr. TRAYER. Where do I mine coal?

Senator CULLOM. Yes.

Mr. TRAYER. In Fulton County, near Canton, and in Livingstone County, about 20 miles west of Kankakee.

The CHAIRMAN. You take the coal from Illinois into Iowa to compete with Iowa coal on the interstate rates?

Mr. TRAYER. Yes.

The CHAIRMAN. You said that the coal production in Iowa had not grown relatively nearly as much as it had in Illinois. That is partly due to the inequality of the coal; but is it due in any sense to the law of the State fixing the distance mileage? All local consumption within the State of Iowa is subjected to the rates made under the Iowa law?

Mr. TRAYER. Yes.

The CHAIRMAN. Do you feel that the coal of Iowa can not reach its full development or expand as fully as it otherwise would because of their laws?

Mr. TRAYER. Yes.

The CHAIRMAN. Their freight laws?

Mr. TRAYER. Yes; I feel clearly about that, Mr. Chairman. What you say about quality is in part the explanation, but it is by no means the entire explanation. Iowa has a peculiarly bad combination of a maximum schedule of rates and a mileage-rate law.

The CHAIRMAN. Yes; a distance-rate law.

Mr. TRAYER. That has proved to be a peculiarly bad combination. Illinois has a maximum schedule of rates, but the railroads operate within that or below it, changing their rates for competitive conditions within the State, and also without the State, without a fear of its changing their entire schedule of rates throughout the State.

The CHAIRMAN. You think that if Iowa had a law as favorable as that of Illinois the local consumption and the local coal business would both increase, do you?

Mr. TRAYER. I think that if the Iowa law imposed no more restrictions upon the making of competitive rates according to competition and commercial conditions the Iowa coal business would be very much better off than it is.

STATEMENT OF A. C. BIRD, ESQ.

The CHAIRMAN. State your full name, residence, and occupation.

Mr. BIRD. A. C. Bird; Chicago; I am the vice-president in charge of traffic of the various railroads known as the "Gould system."

The CHAIRMAN. How long an experience have you had in railroading?

Mr. BIRD. Since the winter of 1865–66, at the close of the civil war.

The CHAIRMAN. Are you prepared to proceed with your statement to-morrow morning at 11 o'clock?

Mr. BIRD. Yes, sir.

Thereupon, at 4.55 o'clock p. m., the committee adjourned until to-morrow, Saturday, May 13, 1905, at 11 o'clock a. m.

SATURDAY, *May 13, 1905.*

The committee met pursuant to adjournment.

Present: Senators Elkins (chairman), Cullom, Kean, Foraker, Clapp, and Newlands.

STATEMENT OF MR. WILLIAM MORTON GRINNELL

Mr. GRINNELL. My residence is New York City. I am a lawyer; I am a bondholder and stockholder, individually and as trustee, in several railroad companies and industrial companies and banks, and am a policy holder in life-insurance companies.

Mr. Chairman and Senators, I am opposed to any commission being granted the power to fix railway rates upon several grounds.

As to the doubtful constitutionality of any such bill as that called the "Esch-Townsend" I will not speak, as the Senators are very much better judges of that than I am, and, as they resisted the enormous pressure brought to bear at the time the bill passed the House of Representatives by so large a majority, I assume that they are not in any sense committed to any such radical change in the traditional policy of the *American people* as is indicated in this bill. I will

only offer a few remarks on the inadvisability of any such legislation; not from the point of view of railroads as such, but from the point of view of the American citizen of the United States, as I understand the subject.

Our history during the past hundred years has proved the truth of the saying that "the least governed is the best governed country." Our marvelous achievements in every form of industry have been owing to the free play of individualism, to equal and open endeavor and initiative for every citizen. We have recognized that under the equal protection of the law men must thrive and prosper or fail by virtue of their own abilities and industry. Beyond enforcing the law, to use your own so as not to injure another, the people have been free from restriction or restraint, to work out their own salvation.

Now, however, there is a tendency to seek either governmental aid or governmental protection in almost all forms of industry for those who are not able enough or industrious enough to help or protect themselves.

It is a reversal of the old ideals and principles which have made us the greatest nation in the world and the envy of all foreign nations, who have been hampered in their development by governmental interference or intervention.

There is, to my mind, no need whatever of further legislation with regard to railway rates. It ought to be an axiom that they should be fixed by the parties interested and who are experts on the subject and not by a number of political appointees with no interest in the matter and less knowledge. We have ample remedy in the common law for any extortionate charge made by a common carrier (leaving the interstate-commerce law as it stands), and with the Elkins law, the most efficient of all against the real evils of transportation industry—rebates and discriminations—every possible protection is assured the public against occasional abuses on the part of the railways, who, after all, should have as free access to the ordinary tribunals as other natural or artificial persons. It seems to be a national tendency, rather than to enforce the laws as they stand and punish the criminals, whether in or out of a trust or a railroad or a labor union, to good-naturedly condone the offense, and, rather than punish, to pass new laws in the vain hope that they will be a deterrent factor. Our statute books are more loaded with penal enactments than those of any other country, but the punishments are much fewer. We make laws against abstractions, such as antitrust laws and antirailway laws, but we let the criminals go, or even occasionally reward them.

Any law fixing rates by a commission would be inadvisable, inasmuch as it is a double delegation of power. A man naturally manages his own affairs most skillfully, those of the parties who are interested with him a little less so, while those of such an abstraction as the public he manages badly. The people of the United States, who, after all, own the railroads (for all who have saved money have invested it either in railroads or in lands or manufacturing industries, all of which are interdependent), delegate the management of the roads to a board of directors, who perform their task with an ability and success which is the admiration of the world. If the Government forces the further delegation of this power from *directors*, who understand their business, to a commission, who do

not understand it, it seems to me that the result can be nothing but disastrous to the country at large. The greatest sufferers will be the savings-bank depositors, policy holders in insurance companies, and small investors, for it is evident that the railroad magnates, the great captains of industry, who are popularly supposed to own the roads, will not suffer, for they would not be what they are if they had not sense enough to foresee the storm and avoid it.

Of all the wonderful achievements in American economic life, none has impressed the foreigner so much as the stupendous development of the railway system, its completeness, its efficiency, and, above all, its economy of operation and lowness of charges.

When the new method of transportation was first inaugurated in the old countries of Europe, seventy-five years ago, a railroad was constructed with the certainty of the traffic which was already there, and which could not fail to take advantage of the superior method of transportation afforded by railroads over stagecoaches and carts. A dense population existed, markets existed, and the investment of capital in railroad enterprises was certain of success, provided ordinary care and intelligence were used.

In our country, however, the problem was absolutely different. The population was everywhere sparse, and throughout the greater part of its extent the country was almost uninhabited, while the physical features of the country were usually difficult. Accumulated capital also was lacking, so that the promoters of our earlier railroads had to face every conceivable form of obstacle, physical and financial, and when they risked their own capital and the capital which they had borrowed they risked not only their own fortunes, but the fortunes of others and their reputations for intelligence and probity as well. The result is that the American railway system is the crowning glory of industrial America and the greatest tribute to the genius of American men.

It was not until 1851 that railroad construction assumed in the United States a wonderful development, exceeding at that time that which prevailed in England or France. During the civil war there was naturally a cessation of building except for military purposes and to some small extent in the North. After the conclusion of peace, however, building was renewed, and the greatest expansion took place between 1870 and 1880, while in the succeeding decade the proportion of new construction was nearly as great. From that time to the present, however, there has been relatively little increase, due to a variety of causes: The first is that railroads had been built in anticipation of the needs of the country; secondly, that the wave of Populism that swept over the country from 1892 to 1897 deterred capitalists from investing money in anything whatsoever. Just prior to that time also, namely, 1887, the Interstate Commerce Commission was created, that anomalous body of men whose status it has taken the Supreme Court eighteen years to define.

Railroad mileage:		Railroad mileage:	
1883	120,519	1898	184,894
1888	154,444	1903	206,876
1893	175,442	1905 (about)	211,000

It will be seen from this how small the relative increase was during the years 1893 to 1898—the result partly of the wave of Socialism and Populism which swept over the country, threatening the money

standard and the stability of investment, legislative attacks on railroads, the popular ignorance of economic laws, and the exploitation of the fetich of unrestricted competition. A great proportion of the railroads, namely, about 98,000 miles, were forced into the hands of receivers between the years 1893 and 1901, and of these about 87,000 were sold under foreclosure. In addition to this a large number were reorganized extrajudicially, while the balance struggled along, but very few being enabled to pay dividends at all.

It is very clear, therefore, that railroads and the owners of railroads (who are not, as it is supposed, a few rich men, but a large number of small investors—savings-bank depositors, policy holders in insurance companies, and railroad employees) have had neither a profitable nor an easy time during the years above mentioned. That they did not merit the animadversion and the unreasoning popular clamor against them is shown by their average rate per ton per mile, showing a greater relative and a greater actual decrease than any other forms of service or commodities.

Average earnings per ton per mile:	Cents.
1882	1.240
1887	1.030
1888	1.001
1889	.922
1890	.941
1891	.895
1892	.898
1893	.879
1894	.860
1895	.839
1896	.806
1897	.798
1898	.753
1899	.724
1900	.729
1901	.750
1902	.757
1903	.763
1904	

While the investors were obliged to be content with average dividend of 2 per cent.

The answer to this unsatisfactory result of returns upon capital invested is that the railroad stocks are largely watered, and in the earlier days of building this was true of many roads, of which the Erie was perhaps the most brilliant example. But the Erie has been in the hands of receivers and has been reorganized and readjusted so many times in so drastic a manner and with such numerous assessments that it is doubtful if there is a drop of water left in the stock, while the New York Central, the Pennsylvania, and other roads during the past ten years or fifteen years have increased their capital by many millions of dollars and have accomplished this by selling stock for from 25 to 50 per cent more money than its par value, while others, although giving the option to subscribers at par, sell the balance to the public at large premiums. In all such cases this is of course the converse of watering. In addition to this it has been the practice of most of the roads (and particularly of the latter two) to invest in improving the property an amount equal to that paid out in dividends to stockholders, so that these roads, and some others, *not* only have no water in the stock, but the owners of the roads have

for many years been investing profits which rightfully belong to them and which in England are legally due and always paid to them in the property.

The character of the country, its extent, the sparseness of population, and the variety of traffic all give to the railroads of the United States a different and more difficult problem than European railroads have to contend with. They are obliged to carry rapidly, at very low rates, and for very long distance commodities for the most part of trifling or small value and very bulky, such as coal, lumber, hay, corn, etc., at the same time accommodating local traffic, which is very considerable. Under the fear of hostile legislation, and with even its frequent realization, the task which the railroad managers of the United States have so successfully accomplished, after alterations of success and failure, is perhaps the most stupendous industrial achievement of any time. They have also been subjected to unrestricted competition, which from false economic ideas has always been fostered, but against which European governments have protected the investor.

As above stated, the total length of the railways in the United States in 1905 was 211,000 miles, or about 25 miles per 10,000 inhabitants. This service is much better than exists in Europe as a whole, the most popular States comparing in railroad service with Belgium, while such States as Wyoming and Arizona would compare with Norway or Portugal. The rates are very much lower in the United States than in Europe, being about one-third of the average in England and France and about half the rates prevailing in Germany, although the cost of labor and of material entering into the construction and operation of our railroads is enormously higher. This great result has been achieved by five decades of experience and study, most of them free from governmental interference and control, by the master minds of the country, who long ago realized that the railroads could only prosper in the long run by the prosperity of the consumer and shipper along its lines and that a large tonnage at a low rate was preferable to a less tonnage at a high rate.

The railway system of the United States may now be considered to be practically complete, the enormous work having been done and the enormous capital provided almost entirely by private enterprise. The building up and development of the country by this agency is universally recognized, but the extent to which it has been done can hardly be appreciated.

It will be interesting to dwell upon a few features of the transportation industry which are so generally misunderstood and which have given rise to much hastily conceived and injurious legislation.

As to the ownership of the railroads of the country: The recent combination and concentration of railroad control and management in the hands of a few corporations and their allied financial interests, popularly known by the names of the men most prominent in them, has given rise to confusion in the mind between management and ownership. The control and management is undoubtedly highly concentrated; the ownership is by no means so, while the number of people directly or indirectly interested in railroads would comprise almost three-quarters of the population who have saved and accumulated any sum of money. Outside of the land, railroad securities are, of course, the most general form of investment, other forms, such as

manufacturing and mining, being directly dependent upon them, as to a very great extent is also land.

The report of the Interstate Commerce Commission has stated the number of stockholders at 327,000.

This at first sight does not seem a large number, but when it is recognized that a great many of these shareholders of record are savings banks, trust companies, insurance companies, educational and charitable institutions, executors and administrators, and that even the individual shareholder has presumably four or five people dependent upon him, the total is seen to be enormous. Besides shares, and to an equal or greater amount, is the investment in the bonded indebtedness of railroads by the same class of institutions and individuals.

An incomplete investigation recently made regarding the railroad securities held by savings banks, insurance companies, and educational institutions is as follows:

By the insurance companies	$845,889,038
By savings banks	571,031,277
By educational institutions	47,468,327
Total	1,464,388,642

And this only represents the investigation in a comparatively few States.

Besides this, the railway system employed in 1903 about 1,300,000 men directly in their service, while in the providing of supplies, chiefly coal and lumber, a very large number of men are indirectly employed. All of these men again have families dependent upon them. The wages which were paid out by the railroads amounted as follows:

1899	$522,967,000
1900	577,264,000
1901	610,713,000
1902	676,028,000
1903	775,321,000

In 1904 the average operating expenses per mile were $250 more than in 1903, while the gross earnings were $152 greater, leaving $98 per mile increased cost of operation, or $20,119,900, most of which was labor cost. These amounts being from 37.5 to 40.8 per cent of the gross earnings of the railroads and from 59.3 to 62 per cent of the operating expenses. When it is remembered that a great part of the balance of these expenses was used in purchasing fuel and other materials and supplies, the chief cost of which is in labor, it can be safely assumed that fully 80 per cent of the operating expenses of railroads is absorbed by labor. Compare these figures with the average of 2 to 3 per cent paid in dividends, and some adequate idea can be found of the real facts of the case as against the popular misconception. The roads in America paid last year 41 per cent of the gross receipts to labor and 25 per cent to capital, while the English roads paid 40 per cent to capital and 28 per cent to labor.

With reference to the contention that overcapitalization of railways necessitates higher rate charges than are just, in order to pay dividends; while it is true certain railroads were originally overcapitalized, these, as has been indicated above, have been either once or many times through such drastic processes of reorganization and receivership that the water is thoroughly squeezed out of them, while

the more conservative class of roads have not only never been overcapitalized, but have poured scores of millions of dollars which belonged to stockholders into the roads.

In 1905, as above stated, the mileage in the United States was 211,000, the capital stock was $6,355,207,335, and the bonded debt was $6,722,216,517. That is to say, that the bonded debt in 1903 was $32,494 per mile, and the capital stock $30,719 per mile, or altogether $63,213 per mile.

In 1883 the amount was $59,400 per mile, and in 1893 $52,000 per mile. During these periods there were vast improvements in roadbeds, second and other additional tracks, reducing grades, straightening curves, heavier rails, better sleepers, and many millions of dollars for raising and lowering tracks in cities, for great terminals, shops, safety devices, and the other numerous improvements which have so transformed railroads within the past ten or twenty years that the increase is surprisingly small.

It is very clear that the railroads could not be duplicated for anything approaching these figures, and if comparison be made with England, Germany, and France, the American railways are not only the best but far away the cheapest in any civilized country of the world.

In Great Britain the capitalization of railroads is $277,495 per mile; in France, $140,000, and even in Germany, where everything has been so cheap until within recent years, over $100,000 per mile. These comparisons speak for themselves, while the proportion of cost to the shippers to the different countries—namely, the freight rates—is known to be about one-third of the average in England and France and half the average prevailing in Germany, all more or less under Government control, and with low labor charges and lower prices for commodities. That is to say that in our country, by the free play of individual initiative, we have built up the largest and best system of railroads in the world, have paid the highest wages, and have given the public by far the cheapest service. If we reverse the system and adopt that prevailing abroad, is it not a fair inference that the result will be the same as these—i. e., higher capitalization, lower wages, and higher rates?

May I read an article of mine in the North American Review?

And after all, who demands the passage of a bill giving the Government power to regulate rates? Certainly not the saving banks, the insurance companies, the educational institution, or the small investor, who own the railroads. Certainly not the railroad employees, these amounting to altogether two or three scores of million of people vitally interested in railroads. Not these, we are told, but the poor, oppressed shippers. But what shippers? Not those represented by the New York Chamber of Commerce, the Philadelphia, Boston, and San Francisco and other commercial organizations. They do not demand Government control; quite the reverse. Still there are some commercial bodies, many indeed, but mostly unknown outside of their locality, and shippers here and there; there are bound to be many discontented and dissatisfied people out of so many millions, but after all we live in a republic and the majority should govern. The 10,000,000 people of New York and vicinity, the four or five million of Boston, Philadelphia, etc., should not be overlooked in favor of obscure, however meritorious, towns and villages with natural and laudable ambition to build up their localities, which in spite of the

claims of their inhabitants are not discriminated against by the railroads but by nature itself.

In conclusion I would say, why change the present condition of affairs, which have given us the best railroad system of the world, with the lowest capitalization, the lowest rates, in spite of the fact that we pay the highest wages in the world?

Why treat the railroads as pariahs and deny them access to the courts, which are open to all other corporations and individuals?

Why depart from the traditional policy of the country, the only policy suited to a free country, and revert to the practice prevailing in monarchies, with the vastly inferior results and conditions there existing staring us in the face and forming a warning example? Why ignore the desires of the vast majority of the industrious and thrifty Americans and obey the behests of an insignificant if noisy minority? And lastly, why enter upon the most dangerous path of Federal intervention and control in all the business interests of the people and deprive the individual as well as the States of the power to manage their own affairs?

(Mr. Grinnell submitted to the committee the following article, written by himself and published in the North American Review. The committee ordered it to be appended to the foregoing statement.)

RAILWAY RATES.

[By W. Morton Grinnell.]

Among the statistics published by the Bureau of Labor, the following table shows the increase in the price of the chief commodities and in railway rates from 1899 to 1902, 100 representing the average price of commodities from 1890 to 1899:

	1899.	1902.	Advance.
RAILWAY RATES.			
Passenger	93.9	96.8	2.9
Freight	86.8	90.2	3.9
PRICES OF COMMODITIES.			
Farm products	100.0	130.5	30.5
Food, etc	98.8	111.8	13.0
Cloths and clothing	96.7	102.0	5.3
Fuel and lighting	105.0	134.3	29.3
Metals and implements	114.7	117.2	2.5
Lumber and building material	105.8	118.8	13.0
Drugs and chemicals	111.3	114.2	2.9
House-furnishing goods	95.1	112.2	17.1
Miscellaneous articles	97.7	114.1	16.4
All commodities	101.7	112.9	11.2

The comparison is still more striking when the year 1898 is taken, and the list of commodities confined to those entering chiefly into railway construction, maintenance, and operation:

	1898.	1902.	Advance.
RAILWAY RATES.			
Passenger	96.2	96.8	0.6
Freight	89.7	90.2	.5
PRICES OF COMMODITIES.			
Fuel and lighting	95.4	134.3	38.9
Metals and implements	86.4	117.2	30.8
Lumber and building material	95.8	118.8	23.0
Miscellaneous articles	92.4	114.1	21.7
All commodities	93.4	112.9	19.5

The tables are interesting as showing that, while the prices of all commodities have advanced, on an average, 13 points, and fuel, metals, and lumber 25 to 35 points, railway rates have only advanced fractionally. There is, however, the further and most important factor in the case, that of labor. Statistics show that the average wages of railway employees have increased quite 15 per cent since 1898.

As concrete examples of the position of the railroads, with respect to the increased cost of labor chiefly, we have the last annual report of the Pennsylvania Railroad. This road is the oldest, the most conservative (in spite of its recent departure from its traditional policy), and the most liberal toward the public and its employees.

The organization of the Pennsylvania Railroad Company, as it is popularly known, is very complex, consisting, first, of the roads operated north and east of Pittsburg—i. e., the Pennsylvania Railroad division, the United Railroads of New Jersey division, the Philadelphia and Erie Railroad division, and the Buffalo and Allegheny Valley division; second, those operated indirectly, and the lines west of Pittsburg which are operated by the Pennsylvania Company. As showing the proportionate increase in the cost of labor on the lines east of Pittsburg operated directly by the company; I give a few statistics:

Increase for 1903 over 1902 in wages paid.

PENNSYLVANIA RAILROAD DIVISION.

	Amount.	Percent.
Enginemen and firemen	$369,799.15	5
Roundhouse men	166,988.82	17
Locomotives, for fuel	1,112,504.60	25
Conductors, baggagemen, and brakemen	229,087.37	6
Yard men	346,495.84	17
Switch tenders and signalmen	76,725.75	13
Watchmen	27,019.99	11
Station agents and clerks	152,340.23	13
Station labor	102,905.08	10

UNITED RAILROADS OF NEW JERSEY.

Enginemen and firemen	$154,143.58	12
Roundhouse men	23,743.58	10
Locomotives, fuel for	438,693.23	23
Conductors, baggagemen, and brakemen	121,068.41	12
Yard men	112,624.25	10
Watchmen	14,454.47	5
Station agents and clerks	99,840.93	10
Station labor	87,602.66	4

PHILADELPHIA AND ERIE DIVISION.

Enginemen and firemen	$125,820.00	20
Roundhouse men	29,157.00	23
Fuel	304,000.00	35
Conductors, baggagemen, and brakemen	122,000.00	22
Yard men	88,700.00	25
Station agents and clerks	295,000.00	28
Station labor	20,000.00	15

While the increase in equipment would necessitate a larger number of employees, this proportion is relatively small, much the larger part consisting in higher wages paid to old employees.

The annual reports of the Illinois Central and the St. Paul railroads show the same condition of affairs. The increase in operating expenses of the Illinois Central for the year ending June 30, 1904, was 9.91 per cent, or $2,957,000, of which advances in wages represented over 40 per cent, while the St. Paul shows an increased cost of $737,064 in labor alone, and in material and supplies of $1,400,000.

We see, therefore, that in one year the increase in the cost of labor is about 10 per cent in the Pennsylvania, and in the Illinois Central and St. Paul nearly as much.

Thus, since 1898, the railways have been obliged to pay from 15 per cent to 50 per cent more for labor, fuel, and all materials which they use, while their rates for passengers, as well as for freight, have advanced but fractionally, and are much lower in this country than in England, France, or Germany, although labor and most materials are much higher here.

In this connection it is interesting to read what Mr. Priestly, the expert English authority, has to say:

The present prosperity of the United States of America is, in no small extent, due to the low rates charged for transportation. This prosperity has reflected itself in an increase of wages all round, which, in its turn, has increased consumption and consequently production. These high wages are not due to the necessaries of life costing the laboring classes in America more than they cost the same class in England. It is only the style of living which is better. At the back of it all there is no doubt the protective tariff; but that would have availed little without the cheapening of the cost of transportation. * * *

In India pooling and the territorial division of traffic are permitted and railways are not only allowed but are encouraged to protect themselves against competition. American railways enjoy no such protection (any act which tends to restrict competition is illegal), but have been left to work out their own salvation as best they could. They have consequently been obliged to devote their efforts to reducing the cost of transportation, and the great bulk of the traffic can now be carried at rates which a few years ago were held to be impracticable and spelled bankruptcy. * * *

Previous to the lowering of the rates by competition consumption of many commodities was confined to a limited class of people, and to that class in a limited quantity. The lowering of rates not only brought these commodities within the reach of a wider class of consumers, but enabled the previous consumers to increase their consumption.

To restore the railways to solvency it was not possible to put up rates, even if this had been desirable with the experience before them, and the railway officials were forced to devise methods which would permit their carrying the traffic at these low rates and at the same time earn a dividend for the stockholders. The alert American mind was not long in devising those methods, and to-day railway rates for goods traffic, judged as a whole, are lower in America than in any other country in the world. * * *

They (American railway men) have managed to do what no other country in the world has done, and that is carry their goods traffic profitably at extraordinarily low rates, notwithstanding the fact that they pay more for their labor than any other country.

The whole history of the railway industry is the story of a wonderful evolution. In its infancy all communities were so anxious to profit by this new method of transportation that franchises, lands, and subsidies were lavished upon any group of individuals who would build a road, while when the road was built any rates which it charged were cheerfully and willingly paid. Human nature would be more than human if it waved aside the franchises, privileges, and money thrown at it; and while the better and more far-sighted men

exercised some moderation and rendered the best equivalent possible in services for the advantages received, the more unscrupulous secured every advantage, every privilege, and all the money possible, and rendered as little in return and at as exorbitant a price as possible. These were the golden years for promoters, construction companies, and builders of railways and expensive ones for the public, who, however, comparing the new with the old methods of transportation, willingly paid the heavy charges laid upon them, and nevertheless made money and prospered. There were two great periods of this feverish and reckless railway construction—from 1845 to 1857, and from 1866 to 1889, with varying intermissions, until the inevitable reaction began. Railways had been built far in excess of the needs of the country, competitive lines were established where no necessity existed, rates were made as heavy as the traffic would bear, in order to bolster up useless and unprofitable lines and pay large dividends to the stockholders of better ones, and the old gratitude and friendliness of the shippers and the general public gradually changed into a deep-seated hostility.

Partly to blame for this condition of affairs was the hugging of the fetish of competition, unrestrained and à outrance. This false economic theory, ingrained in the minds of most men, frequent unscrupulousness in taking advantage of the craze of all communities for railroads and more railroads, and the credulity of the public in believing that any and all roads, in any section of the country, were gold mines in another form, all led to the inevitable periods of disaster, receiverships, and reorganizations, which occurred with every period of depression, until in the decade 1890–1899, even many of the oldest and best roads were subjected to these drastic processes.

In 1895, 1896, and 1897 more than 70 per cent of the capital stock of the railroads in the United States paid no dividends, and more than 15 per cent of the funded debt paid no interest. At the end of this period most of the inflation which had existed in many roads had been adequately punctured, and the bonds and stocks represented very generally money invested in the railroads.

Chastened as they were by this long and trying experience, and having learned a few economic truths, the managers were prepared to perform their duties to the public in a different spirit and manner from that which had hitherto generally prevailed; but the hostility which had become so general could not be immediately transformed into good will.

Hostile legislation had been everywhere enacted, not only hostile, but irrational; taxes were increased and new ones levied.

The attitude of animosity which the Interstate Commerce Commission has assumed toward railroads is a reflection of that which has prevailed for many years—almost a generation—among the public. It should not, of course, exist in a quasi-judicial body, but as the composition of the Interstate Commerce Commission is affected by the usual political reasons, it is not unnatural that it should, consciously or unconsciously, represent the animus of its creators. This sentiment of hostility toward railroads, fortunately decreasing, would probably disappear with a fuller knowledge by the public of the railway industry.

Whatever the failings of the great railway managers are, they can not be accused of stupidity, and they have learned the lessons which, in the earlier period of railways, managers might be excused for not apprehending, that harmony aids and friction retards progress; that unrestrained competition is as destructive as other warfare; that railways can only prosper with the prosperity of the country through which they pass and of the county at large; that large traffic at low rates is preferable to less traffic at high rates; and that railroads are quasi-public corporations and owe a duty to the public.

That the Interstate Commerce Commission, instructed by the frequent overrulings of its decisions by the Supreme Court, has endeavored to examine more fairly into the propriety of increases in railway rates is evident from the report and opinion of the Commission in re advance of freight rates, in the case decided on April 2, 1903; as is apparent, also, their utter inability to cope with the subject. In this very important case the following roads were represented: Michigan Central, Lake Shore, Pennsylvania, Baltimore and Ohio, Wabash, Erie, New York Central, Southern, and others.

With regard to the contention that, as the prices of all commodities and of labor have advanced, the railroads are justified in advancing rates, the Commission had this to say:

> The second reason is that they should be allowed to increase their revenues, owing to increased expense of operation. The whole claim stated upon the hearing, in varying forms, comes briefly to this: The present prices of commodities are high, therefore they can pay a higher freight charge. Times are good, and railroads should share in the general prosperity; but high prices of materials and labor add to the expense of operation, and gross revenues must therefore be increased.
>
> Plainly the character of the question thus presented is entirely different from that of questions previously considered. It is no longer a question of what the traffic will bear, but rather of what the public should bear. Conditions are such that this rate *can* be advanced as between the people who pay it and the stockholders who receive it. Is the advance right? Every question as to the reasonableness of a rate may present itself in two aspects. First, is the rate reasonable estimated by the cost and value of the service, and as compared with other commodities? Second, is it reasonable in the absolute, regarded more nearly as a tax laid upon the people who ultimately pay that rate? The considerations which determine the first of these aspects are of but little weight in determining the second, which we have now to consider.
>
> Every such inquiry involves the idea of some limit beyond which the capital invested in railways ought not to be allowed to tax other species of property. What is that limit, and how can it be fixed?

It is a matter of common notoriety that the Post-Office Department, which costs the public several millions a year in addition to the "tax" represented by stamps, could be run at a profit by a private corporation and the third and fourth class matter carried free, and so with all other departments of government, whether Federal, State or municipal.

The question of governmental ownership is not, of course, entertained by serious men; although it is a favorite panacea of theorists, socialists, and cranks, whose heroic efforts and propaganda are usually coincident with some new and fresh scandal in a Government Department.

Adequate but scientific supervision of quasi-public corporations, however, would be welcomed by all the better class of railroads, whose only complaint is that the Interstate Commerce Commission does not

present this type. A purely political body, occupying a nondescript sition, it has neither the power nor the knowledge to do effective rk. Its crude conclusions are usually reversed by the Supreme urt, but that is a long way to go for a decision on rates, and the nplexity and technicality of the issues involved put an unnecessary rden upon that body, and one which it should not be called upon to rform.

In the Michigan Central Case, for instance, which involved a most portant principle, i. e., whether a railroad was not justified in propriating a portion of its earnings to the betterment of its prop- y, which (the rates being admittedly low) would seem to affect ly the stockholders, the Interstate Commerce Commission reasoned follows:

But it may be urged that after paying its fixed charges, taxes, and dividend of its net income for the year 1902 it had left but a comparatively small ount. That year was one of prosperity, and it can hardly be expected that iditions will continue without interruption as favorable. Ought not a rail- y to be allowed to accumulate, in some form, a surplus during fat years which y tide over subsequent lean years? To this we would unhesitatingly answer the affirmative. In times like the present a railroad company should be owed to earn something more than a merely fair return upon the investment; t we also think that it clearly appears that the Michigan Central is doing this. Within recent years this railroad, in common with many others in the United ites, has been extensively improved. Grades have been eliminated, curves luced, wood bridges replaced with those of iron and stone, station buildings uilt, equipment of all kinds greatly added to. All this has been rendered essary, partly by increase in traffic and partly by the desire to handle this ffic in the cheapest possible manner; and it adds very materially to the value d the earning capacity of the property. Now, in so far as these outlays are sonably necessary to keep the property up to its former standard, or perhaps even a higher standard of operation, they are properly a part of the operating penses of the road, but when they add to the earning capacity of the property, d therefore to its value, they are in the nature of a permanent improvement. suming that the stockholder is only entitled to exact from the public a certain ount for the performance of the service, he clearly has no right to both receive at amount in dividends and add to the productive value of his property. The licy of the Michigan Central has been to make these improvements, not by ding to the debt or the capital stock of the company, but out of its gross rnings as a part of the operating expenses.

This is hardly encouraging either for the large capitalist or the all investor. What a long distance we have traveled from the day hen the State of New Jersey gave the Camden and Amboy Railroad e exclusive franchise of roads throughout the State forever, or from e days of huge land grants and millions of subsidies! Thousands millions of capital having been lured into investments in railroads the attitude of the States and the public, the owners are now told at they are entitled to earn *something* on their capital. The time s been, and is liable to come again, when railroads had much better ke up their tracks, abandon their franchises, and realize on their sets what they can, instead of carrying on a ceaseless fight for istence and for an adequate return for the capital and labor ployed.

W. MORTON GRINNELL.

ORIENTAL EXPORTS AND IMPORTS.

The following statistics were furnished by Mr. J. J. Hill to accompany his statement:

JAPAN.

Value of principal imports into Japan.

[Unit of yen. Values: 1 yen = $0.50 gold; 1 kin = 1.32 pounds; 1 picul = 132 pounds.]

Article.	United States.	Great Britain.	Germany.	France.	Belgium.	Austria-Hungary.
Raw cotton	10,910,485					
Cotton fabrics		10,760,639	632,950			
Woolen goods		5,187,019	5,163,244	2,505,409	980,020	
Petroleum	6,825,457					
Sugar			2,773,254			2,497,951
Rice						
Flour	10,103,676					
Wheat	1,721,983					
Electric machinery	667,279	234,985	195,588			
Locomotives	1,078,689	1,113,134				
Iron and iron manufactures	1,813,496	9,635,729	4,845,479		3,192,931	

Article.	Russian Asia.	British India.	French India.	Dutch India.	China.	Philippine Islands.	Total value, including all other countries.
Raw cotton		38,470,934			15,609,162		68,206,724
Cotton fabrics							11,853,121
Woolen goods							16,316,073
Petroleum	4,630,239						11,455,696
Sugar				9,557,022	1,040,356	2,886,299	20,966,031
Rice		27,427,674	14,207,867				51,960,273
Flour							10,324,420
Wheat					2,227,587		4,767,838
Electric machinery							1,113,641
Locomotives							2,267,471
Iron and iron manufactures							19,580,454

Value of principal exports from Japan.

Article.	United States.	Great Britain.	Germany.	France.
Camphor	1,149,924	491,046	672,501	260,275
Silk and silk tissue	53,011,256	6,701,482	658,676	31,761,609
Tea	12,451,942	28,874	356	508
Matting	4,290,457	54,949	8,562	1,321
Cotton yarns				
Coal	684,081			
Seaweeds				
Copper	260,395	1,887,862	815,536	245,236
Matches	16,665			

Article.	British India.	China.	Hongkong.	Korea.	Total value, including all other countries.
Camphor	595,736	56,281	20,490		3,537,844
Silk and silk tissue	3,976,586	515,183	697,198	78,563	109,981,229
Tea	1,111	27,642	5,848	16,924	13,935,252
Matting	8,075	15,499	17,508	373	4,599,866
Cotton yarns	731	23,338,366	1,891,426	1,080,663	31,418,613
Coal	311,376	8,040,473	5,886,761	162,631	19,260,501
Seaweeds		997,813		11,345	1,043,588
Copper	455,544	4,008,915	5,630,992	184,925	14,957,019
Matches	846,672	3,294,960	3,101,352	244,604	8,473,071

NOTE.—Throughout this set of statistics the aim has been, as a rule, to list commodities having an export value of $250,000 gold or over.

EXPORTS.

y and value of the important commodities exported from Japan to United ', Canada, Great Britain, Germany, France, China, Hongkong, and hilippine Islands, and grand total export value of commodities of which l States received part, for the twelve months ending December, 1904.

UNITED STATES.

Article.	Quantity.	Value.	Total value exports to all countries.
		Yen.	*Yen.*
....kins..	31,231,478	12,451,942	13,935,252
....piculs..	96,616	586,648	4,959,879
....kins..	1,397,143	1,149,924	3,537,844
....do....	26,491,391	567,256	947,224
ilk tissues....do....	5,064,639	52,489,169	108,930,853
s....yards..	1,700,680	522,087	1,000,386
kerchiefs....dozen..	312,065	979,986	2,938,420
....tons..	114,856	684,081	19,260,501
....rolls..	609,557	4,290,457	4,599,566
and earthenware....	.....	1,375,061	3,169,008
its....bundles..	2,395,019	867,914	3,787,062
p braids....do....	1,980,879	693,730	1,246,590

CANADA AND OTHER BRITISH AMERICA.

Article.	Quantity.	Value.
		Yen.
....kins..	4,130,149	1,289,626
....piculs..	35,446	250,564
ilk tissues....kins..	20,149	274,569
s....yards..	825,381	265,322
kerchiefs....dozen..	44,921	162,201
....tons..	8,487	59,409
....rolls..	13,281	84,700
and earthenware....	.....	84,439

GREAT BRITAIN.

....piculs..	92,990	545,266
....kins..	548,250	491,046
efined....do....	5,445,982	1,837,862
ilk tissues....do....	540,498	6,701,482
kerchiefs....dozens..	166,827	687,408
emp, cotton, or wool)....square yards..	592,759	305,712
its....bundles..	3,933,416	1,360,759
p braids....do....	697,151	428,718

GERMANY.

....piculs..	68,208	347,686
....kins..	761,289	672,501
efined....do....	2,533,671	815,596
ilk tissues....do....	48,379	658,676
its....bundles..	935,795	379,299

FRANCE.

....piculs..	23,584	125,101
....kins..	380,498	360,275
efined....do....	806,748	245,296
ilk tissues....do....	5,628,070	31,748,496
s....yards..	99,716	33,113
kerchiefs....dozens..	69,627	214,400
its....bundles..	987,707	397,438

Quantity and value of the important commodities exported, etc.—Continued.

CHINA.

Article.		Quantity.	Value.
			Yen.
Seaweeds	kins	48,457,857	997,813
Beer	dozen bottles	197,678	506,982
Mushrooms	kins	449,452	309,392
Ginseng	do	214,684	232,729
Copper, refined	do	11,105,086	4,008,915
Cotton yarns	do	83,782,212	28,338,366
Cotton tissues	pieces	446,012	994,796
Do	yards	22,363,036	1,988,789
Towels	dozens	592,068	560,058
Coal	tons	1,521,933	8,040,473
Matches	gross	12,179,208	3,294,960
Umbrellas	numbers	1,523,179	804,996

HONGKONG.

Mushrooms	kins	964,081	554,672
Copper, refined	do	18,105,328	5,630,992
Cotton yarns	do	5,322,515	1,891,426
Cotton tissues	pieces	1,141,866	923,726
Do	yards	2,026,551	189,662
Coal	tons	1,051,339	5,886,761
Matches	gross	9,781,910	3,101,852
Straw plaits	bundles	1,537,559	600,576
Porcelain and earthenware			316,867

PHILIPPINE ISLANDS.

Mineral water	kins		87,550
Onions	do	2,738,516	97,283
Potatoes	do	8,457,608	196,157
Wax, vegetable	do	257,531	73,719
Cotton yarns	do	370,000	156,953
Coal	tons	97,201	592,143

IMPORTS.

Quantity and value of the important imports into Japan from United States, Canada, Great Britain, Germany, France, China, Hongkong, and the Philippine Islands for the twelve months ending December, 1903.

UNITED STATES.

Article.		Quantity.	Value.	Value imports from all countries.
			Yen.	*Yen.*
Electric machinery			667,279	1,113,641
Fire engines and pumps			103,303	417,098
Locomotive engines			1,078,689	2,267,471
Sewing machines			142,602	248,630
Steam boiler and engines			375,546	989,873
Condensed milk	dozens	150,217	416,232	979,990
Flour	kins	204,915,427	10,103,676	10,324,429
Wheat	do	43,095,035	1,721,983	4,767,838
Leather	do	1,016,359	758,217	1,532,266
Rails	do	5,333	450	2,751,971
Rail fittings	do	228,282	15,489	515,911
Pipes and tubes	do	9,491,095	763,049	1,482,249
Nails	do	15,693,318	773,093	1,509,993
Materials for bridges and buildings	do	1,650,336	174,434	589,325
Lead	do	3,903,331	310,272	909,091
Kerosene oil	gallons	32,511,201	6,825,457	11,455,696
Lubricating oil	kins	10,488,232	476,836	488,280
Paraffin wax	do	9,560,318	942,298	947,531
Cardboard	do	7,283,751	669,948	690,756
Cotton, raw, ginned	piculs	396,817	10,910,485	68,206,724
Tobacco leaf	kins	4,374,763	1,072,922	1,077,179
Coal	tons	17,548	296,815	1,972,985
Carriages, bicycles, tricycles, and parts			863,075	972,948

Quantity and value of the important imports, etc.—**Continued.**

CANADA AND OTHER BRITISH AMERICA.

Article.		Quantity.	Value.
			Yen.
	kins..	8,619,839	190,799
lmon and trout	do....	1,468,087	94,996
nd rough lumber			121,244

GREAT BRITAIN.

nts of farmers and mechanics			149,924
machinery			234,985
nes and pumps			308,516
ive engines			1,113,134
machinery			511,703
ilers and engines			535,275
d milk	dozens..	185,873	368,452
	kins..	14,451,531	779,000
mill steel:			
nd ingot	do....	58,655,871	1,175,889
nd rod	do....	8,974,865	547,033
	do....	31,455,817	1,123,785
ittings	do....	3,689,941	215,225
and sheet	do....	35,440,147	1,598,169
nized sheet	do....	26,293,491	2,391,182
and tubes	do....	8,088,931	629,747
d plate or sheet	do....	10,677,713	964,783
rial of bridges and buildings	do....	4,470,005	355,551
	do....	4,063,625	582,409
arns and threads	kins..	1,323,807	1,058,997
tton manufactures	square yards..	77,898,982	9,701,642
l yarn	kins..	852,672	813,278
nanufactures	square yards..	7,311,033	4,373,741
	tons..	102,707	1,675,494

GERMANY.

machinery			195,588
	liters..	2,472,348	331,163
yes	kins..	1,872,065	1,246,162
	do....	463,025	1,345,024
mild steel:			
nd rod	do....	33,059,270	1,238,318
	do....	39,331,215	1,329,011
ittings	do....	3,938,964	230,349
and sheet	do....	8,154,514	360,375
	do....	13,531,889	686,323
raph wire	do....	8,837,369	568,948
	do....	4,028,853	596,140
	do....	7,308,413	862,377
	piculs..	451,398	2,773,254
arns and threads	kins..	21,838	19,271
anufactures	square yards..	2,177,779	613,679
l yarns	kins..	2,563,193	3,289,167
nanufactures	square yards..	3,461,890	1,874,077
	kins..	8,023,853	434,604

FRANCE.

	kins..	2,253,877	356,592
extract	do...	549,799	115,327
paper			202,489
l yarns	kins..	104,468	150,944
nanufactures	square yards..	7,108,838	2,354,465

***Quantity and value of the important imports, etc.*—Continued.**

CHINA.

Article.	Quantity.	Value.
		Yen.
Eggs ..... thousands..	67,802	814,474
Beans, pears, and pulse ..... piculs..	1,967,462	5,508,137
Rice ..... do...	432,046	2,044,801
Wheat ..... kins..	68,389,500	2,227,587
Sugar ..... piculs..	267,954	1,040,356
Cotton, raw:		
Ginned ..... do...	667,223	15,609,162
In the seed ..... do...	70,346	547,318
Cocoons ..... kins..	1,008,300	926,855
Tussah silk yarns ..... do...	250,575	596,725
Flax, hemp, jute, and China grass ..... do...	7,619,972	902,937
Oil cake ..... piculs..	3,729,596	8,528,696

HONGKONG.

Sugar ..... piculs..	260,843	1,539,748
Cocoons ..... kins..	10,083	926,855

PHILIPPINE ISLANDS.

Sugar ..... piculs..	572,196	2,586,299
Flax, hemp, jute, and China grass ..... kins..	2,210,159	480,027

Total value of commodities exported to United States, Canada, Great Britain, Germany, France, China, Hongkong, and the Philippine Islands from Yokohama, Kobe, and Nagasaki, and grand total of Japanese exports to above countries for twelve months ending December, 1903.

[Unit of yen.]

To—	From—			Total for three ports.	Other ports.	Grand total for all ports.
	Yokohama.	Kobe.	Nagasaki.			
United States	65,421,813	15,640,518	24,036	81,086,367	1,637,618	82,723,985
Canada, etc	1,743,538	1,086,387	5,620	2,835,545	87,994	2,923,539
Great Britain	10,398,843	5,647,401	74,143	16,120,387	324,136	16,544,523
Germany	2,107,701	2,967,062	2,797	5,077,560	108,098	5,185,658
France	32,557,716	1,705,621	5,971	34,269,308	9,807	34,279,115
China	4,299,159	35,764,621	2,734,649	42,798,429	22,195,750	64,994,179
Hongkong	6,802,502	14,922,452	1,165,199	22,890,153	6,834,541	29,724,694
Philippine Islands	353,551	663,912	57,688	1,075,151	600,368	1,675,519

Total value of commodities imported from the same countries into the same ports, and grand total of imports from said countries for same period.

[Unit of yen.]

From—	To—			Total for three ports.	Other ports.	Grand total for all ports.
	Yokohama.	Kobe.	Nagasaki.			
United States	17,186,979	22,984,961	2,103,747	42,275,687	3,998,183	46,273,870
Canada, etc	252,815	131,347	48,825	432,987	66,052	499,039
Great Britain	23,325,155	18,759,880	3,591,002	45,676,036	3,060,722	48,736,758
Germany	13,584,976	11,189,167	192,059	24,966,202	1,992,774	26,958,976
France	1,793,041	3,138,671	45,320	4,977,032	130,881	5,107,913
China	10,302,801	25,234,140	3,575,283	39,201,724	6,256,333	45,458,057
Hongkong	768,672	411,378	218,626	1,398,674	341,052	1,739,726
Philippine Islands	2,886,454	415,805	39,613	3,341,872	79,681	3,421,553

Total exports and imports from Yokohama, Kobe, and Nagasaki, and grand total of Japanese exports and imports for the twelve months ending December, 1903.

Port.	Exports.	Imports.
	Yen.	*Yen.*
Yokohama	146,580,438	110,878,967
Kobe	90,518,216	154,534,012
Nagasaki	4,956,979	12,867,390
All other ports	47,446,809	38,855,158
Grand total	289,502,442	317,135,517

SHANGHAI.

IMPORTS.

The principal imports into the port of Shanghai from foreign countries and Hongkong are, for the year 1903:

[NOTE.—Values are expressed in haikwan taels. One haikwan tael=$0.64 gold.]

Article.		Quantity.	Value.
Opium	piculs	33,440	26,604,911
Cotton fabrics			88,881,814
Woolen goods	pounds	479,611	228,261
Do	pieces	126,962	1,003,005
Do	piculs	3,581	391,063
Do	yards	1,287,183	1,199,462
Iron and mild steel and galvanized iron	piculs	1,405,382	4,149,764
Gunny bags	pieces	21,613,402	1,197,990
Candles	piculs	33,571	635,589
Cigarettes			1,457,286
Coal	tons	865,361	4,758,988
Aniline dye			1,542,321
Indigo	piculs	9,485	436,551
Japan matches	gross	4,129,314	960,888
Needles	thousands	2,284,082	500,913
Kerosene	gallons	42,660,099	7,703,015
Paper	piculs	27,785	633,309
Pepper	do	21,303	449,782
Seaweed	do	412,707	1,079,668
Sugar	do	1,385,991	6,372,569
Timber	square feet	41,676,383	1,393,503
Wines			489,197
Sandalwood	piculs	62,781	500,359

Details of principal forms of cotton goods.

[Values in haikwan taels.]

Article.	From United States.	From England.	From India.	From Japan.
Shirtings, gray, plain	550,485	9,972,384	11,628	10,573
Sheetings, gray, plain	9,233,430	1,457,865	12,624	150,659
Shirtings, white, plain	32,901	6,123,358		
Drills	5,099,174	148,797	22,284	11,688
Jeans	485,506	357,865		
T cloths		1,570,104	21,629	154,559
Yarn, gray and bleached		502,745	28,700,266	12,383,245
Total	15,401,496	20,133,118	28,768,424	12,710,724

SUMMARY.

United States	15,401,496
England	20,133,118
India	28,768,424
Japan	12,710,724
Total by countries	77,013,762

TOTAL VALUES OF IMPORTANT KINDS OF COTTON, OF WHICH DETAILS BY COUNTRIES ARE NOT AVAILABLE.

Printed cottons	2,910,314
Dyed cottons	7,110,848
Dyed drills	1,846,890
Total	11,868,052
Total by countries (see above)	77,013,762
Grand total	88,881,814

Details of imports of kerosene oil.

Kind of oil.	Quantity.	Value.
	Gallons.	*Haikwan taels.*
American	16,726,321	3,512,396
Russian	11,211,010	1,907,410
Sumatra	4,345,330	779,777
Sumatra, in bulk	10,377,430	1,508,430
Total	42,660,099	7,708,015

EXPORTS.

The principal exports from the port of Shanghai to foreign countries and Hongkong are:

[Values in haikwan taels.]

Article.	Quantity.	Value.
	Piculs.	
Beans	602,370	1,439,455
Bristles	26,345	1,504,325
Cotton, raw	362,980	6,352,149
Hemp	105,373	1,296,110
Cow and buffalo hides	177,681	3,553,628
Medicines	87,995	782,980
Raw silk	27,809	9,120,387
Cocoons and refuse silk	44,917	2,050,578
Silk products	5,373	2,043,049
Lamb and goat fur clothing	636,430	922,510
Lamb and goat furs	6,928,402	3,225,531
Straw braid	65,111	3,205,585
Tallow	160,382	1,478,570
Tea	737,026	14,131,837
Sheep's wool	163,101	2,038,767
Oil, ground nut[a]	141,807	1,049,374
Cloth, native[a]	10,496	472,312

[a] Went wholly to Hongkong.

Details of tea exports to the principal countries.

[Quantities in piculs.]

To—	Black tea.	Green tea.	Total.
Great Britain	59,445	38,881	98,326
United States	48,328	142,724	191,052
British America	3,829	11,502	15,331
India	2,127	10,287	12,414
Hongkong	1,248	981	2,229
Germany	15,100	3,854	18,954
France	769	8,652	9,421
Austria	1,804	.....	1,804
Russia:[a]			
Manchuria	92,088	107	92,195
Via Black Sea ports	1,754	71,967	73,721
Japan	353	2,944	3,297

[a] Russian Manchuria also took 152,514 piculs black and 18,952 piculs green (brick tea).

Details of exports of raw silks, cocoons, and refuse.

To—	Raw silk.		Cocoons.		Waste silk and refuse cocoons.		Total.	
	Bales.	Piculs.	Bales.	Piculs.	Bales.	Piculs.	Bales.	Piculs.
France	24,955	25,002	781	2,267	12,149	39,405	37,885	66,674
United States	10,367	10,386	.....	.....	171	561	10,538	10,947
Italy	8,728	8,690	8,176	8,771	2,133	7,089	14,037	19,550
India	2,097	2,261	.....	.....	86	288	2,183	2,549
Egypt	1,769	1,700	.....	.....	5	15	1,774	1,715
Great Britain	655	598	42	101	3,343	11,389	4,040	12,588
Japan	554	548	11,143	8,798	1,151	1,374	12,848	10,720

Summary of imports and exports by principal foreign countries and Hongkong.

[Values in haikwan taels.]

Country.	Value of imports from, to Shanghai.	Value of exports to, from Shanghai.
Great Britain	45,810,824	8,929,484
Hongkong	36,266,500	8,814,180
India	31,574,999	1,658,063
Japan	25,536,080	18,575,361
United States and Hawaii	22,697,187	18,519,139
Europe (Russia excepted)	13,891,707	33,764,506
Singapore and Straits	2,809,003	954,772
Russia via Black Sea ports	1,908,078	2,391,786
Sumatra	1,501,114	4,133
British America	624,519	443,051
Australia	372,281	58,221
Korea	364,722	1,056,204
Philippine Islands	289,407	203,362
Turkey in Asia, Persia, Egypt, and Aden	145,245	2,311,006
Russian Manchuria	15,690	3,372,847

HONGKONG.

Hongkong is an English "free port," and it is extremely difficult to obtain figures about its foreign trade. Statistics as to imports were not available, but the following statement of exports for 1904 was secured from the Hongkong General Chamber of Commerce:

[All in tons of 40 cubic feet.]

Article.	To Great Britain.	To continent of Europe.	To United States and Canada.	Total.
Silk piece goods	161	96	636	893
Waste silk	3,220	1,316	2,135	6,671
Pierced cocoons	40	354	.....	394
Preserves	3,300	950	1,540	5,790
Soy	3,200	.....	.....	3,200
Matting	3,490	3,520	12,400	19,410
Chinaware, etc.	835	3,693	364	4,892
Star anise	35	334	.....	369
Cassia	1,456	8,400	3,180	13,036
Essential oil	66	185	.....	251
Bristles	222	990	.....	1,212
Chinese merchandise	500	.....	12,000	12,500
Feathers	1,650	5,395	.....	7,045
Camphor	21	23	.....	44
Hemp	10,980	1,534	1	12,515
Minerals	20	.....	.....	20
Sundries	1,500	1,740	2,300	5,540
Tea	8,134	2,015	2,100	12,249
Rattan ware	.....	.....	326	326
Cassia bud	15	.....	.....	15

Article.	To Great Britain.	To continent of Europe.	To United States and Canada.	Total.
Canes		4,500	360	4,860
Crackers		764	1,100	1,864
Human hair		546		546
Rattan			1,300	1,300
Nut oil			837	837
Rice			14,350	14,350
Gunnies			45,875	45,875
Sugar			2,750	2,750
Fans			280	280
Kapoh			570	570
Total	38,845	36,355	104,403	
Grand total				179,603

MANILA.

Summary of imports into the port of Manila, P. I., and of exports therefrom, by countries, during the fiscal year ending June 30, 1904.

[Values are in United States currency.]

Country.	Value of imports.	Value of exports.
United States	$4,548,858	$9,060,845
England	3,489,537	9,198,283
Germany	1,487,306	107,002
France	1,131,200	1,966,686
Spain	1,900,694	1,155,866
Japan	713,227	395,320
Chinese Empire	3,057,392	736,419
Hongkong	684,312	5,451,416
French East Indies	6,428,366	9,419
British East Indies	1,924,907	1,299,286
All other countries	3,418,437	1,127,761
Total [a]	28,784,236	30,508,303

[a] The great part of the foreign trade of the islands passes through the port of Manila. This is shown by comparison with the corresponding figures for the Philippine Islands, which are: Total value of imports from all countries, $34,327,481; total value of exports to all countries, $37,033,185.

Value of principal imports, by countries and by commodities, into the Philippine Islands for the twelve months ending December, 1903.

[Values in United States currency.]

Article.	United States.	Great Britain.	Germany.	France.	Spain.	China.
Animals and animal products	$130,306	$40,444	$36,507	$21,586	$346,336	$723,087
Cereals and cereal products except rice	838,456	33,966	48,574		17,253	75,620
Meat and meat products	97,961	73,717			64,698	320,274
Rice						1,663,848
Fish and fish products	45,296	19,315			117,402	71,360
Dairy products	63,012	122,333	4,017	26,517		39,277
Liquor and beverages	397,890	92,075	44,679	59,346	214,446	9,278
Cotton and manufactures	346,009	2,585,605	324,165	84,129	630,476	95,992
Silk, wool, vegetable fibers, and their manufactures	23,833	158,933	202,452	157,184	80,150	345,879
Jewelry and manufactures of gold and silver	13,213	3,449	23,252	291,159		
Iron and steel and their manufactures	557,327	822,104	491,748	142,778		
Chemicals, drugs, paints, and dyes	88,786	205,156	88,645	58,026	29,661	309,664
Glass, earthenware, stone, etc	33,948	99,672	123,903	27,341	40,060	57,016
Paper and paper manufactures	146,668	33,089	57,868	122,151	130,478	43,608
Wood and wood manufactures	225,704		83,172	16,415	15,856	23,333
Oils	331,543	8,152	9,068			31,792

s of principal imports, by countries and by commodities, etc.—Continued.

Article.	Hong-kong.	British East Indies.	French East Indies.	Other countries.	Total.
ls and animal products	$143,661	$31,174		$91,326	$1,564,427
ls and cereal products except rice		39,961		38,668	1,092,498
and meat products				90,237	646,937
		1,547,634	$8,152,068	1,188,732	12,552,399
nd fish products		4,074		21,124	378,571
products				69,920	325,076
r and beverages	9,085	18,690		82,054	927,543
l and manufactures		309,500		692,912	5,068,788
wool, vegetable fibers, and their ufactures		30,127		209,104	1,207,662
ry and manufactures of gold and er		5,657		12,341	349,571
nd steel and their manufactures				256,690	2,270,647
icals, drugs, paints, and dyes		359,583		135,134	1,274,655
earthenware, stone, etc	34,581	3,347		67,979	487,347
and paper manufactures				72,796	607,658
and wood manufactures	14,900	28,316		122,014	539,710
	3,377	5,909		294,989	634,770

es of principal exports, by countries and by commodities, from the Philippine Islands, for the twelve months ending December, 1903.

[Value in United States currency.]

Country to which exported.	Hemp.	Sugar.	Tobacco, and manufactures of.	Copra.
d States	$11,763,440	$1,135,826	$2,698	$9,354
Britain	8,930,942		109,400	250,657
any			22,604	272,590
e	52,006		53,495	2,325,218
	12,777		548,138	279,622
	2,507		6,080	12,523
ia-Hungary	4,000		268,360	19,979
um	23,363		24,375	50,408
	19,702	284,299	82,384	
kong	614,407	622,111	375,757	
	172,298	1,282,301	8,571	3,479
h East Indies	128,519		196,131	78,389
East Indies	210		24,626	
ia	4,000		9,120	
alasia	273,417		98,169	2,560
gal			23,460	21,955
rlands			64,856	
countries		17	28,665	13,060
Total	22,000,588	3,324,554	1,946,375	3,319,798

value of these four commodities	$31,091,810
value of all other exports	1,304,936
Total value of exports for 1903	32,396,746

STATEMENT OF MR. A. C. BIRD.

ınator CULLOM. You were placed on the stand yesterday after-ı, before the adjournment, I believe. You may proceed in your way to give your views. Before that, however, let us know t your experience has been, how long you have been engaged in 'oad business, and in what particular lines.

r. BIRD. I have been engaged in the service of railroad companies ɜ the winter of 1865–66, commencing in a very humble position ight watchman, and within a few years being attached to the ıral freight in St. Louis, and afterwards general freight agent he St. Louis, Kansas City and Northern Railway, now part of

the Wabash System. In 1882 I resigned from that office and became general freight agent of the Chicago, Milwaukee and St. Paul, which company I served for twenty years and a little more, at first as general agent and freight-traffic manager, general traffic manager, and the last ten or twelve years as third vice-president in charge of traffic. I left that service voluntarily on the 19th of March, two years ago, in order to become vice-president of the various lines in the Gould system.

Ever since 1879 or 1880 my business has required me to appear before State railroad commissions, and more lately, especially since 1877, before railroad committees of various legislatures. I have been engaged in most of the controversies of the Middle West, either on behalf of defendant or plaintiff, so that I have been obliged to be before the railroad committees of the various legislatures, before State commissions, and the Interstate Commerce Commission. I have had many years' experience in that line.

Mr. Chairman and Senators, I should preface what I have to say by my unqualified statement that I am not here, nor have I appeared before any Congressional committee, as opposing any reasonable regulation of railway companies. I have held for many years that the reasonable and fair regulation necessary for the welfare of the people was equally necessary to the welfare of the common carrier.

I think the controversy regarding the Esch-Townsend bill requires a review of the Cullom Act, the original law of 1887. As I construe it, the requirements of that law were few, simple, and just; simple at least upon the face of it. The requirements or prohibitions of that bill were:

1. The prevention of secret rebates or preferential rates.
2. The prevention of unreasonable rates per se.
3. The prevention of relatively unreasonable rates.

I understand that all other parts of that law as originally passed were mere machinery for enforcement, although there was one underlying principle which may be regarded in a different light, in this: That there lay through it all the manifest intention to prevent anything that would limit competition, anything that would deprive the shipper of any of the results of unrestrained, unlimited, and ungovernable competition. That idea is still further strengthened and was still further strengthened by the passage of the Sherman antitrust act, which has been construed literally and explicitly as preventing the representatives of two or more competing railroads from agreeing upon a reasonable rate between two competitive points.

But we will go back to the primary objects of the bill. I think any railroad servant who appears before a body of this kind is under great disadvantage. Whatever he may say is discounted very largely by the fact that he is in the service of a common carrier. In what I have to say, however, in respect to the pending issue, I shall rely largely upon the unqualified testimony of the proponents of the pending measure. I want to rely upon Mr. Bacon, Governor Cummins, and others who have appeared before you, for the proof of what I want to say to you.

The advocates of this measure have almost universally testified

that rebates or secret preferences have disappeared; that the amendment to the original act, known as the Elkins law, changing materially the nature of the punishment for a violation of the principal feature of this act, has greatly, if not wholly, led to the disappearance of rebates. In other words, that amendment has converted the presidents and directors of all these great railway companies into a body of policemen. What capital punishment is to the murderer, so is a material fine to the corporation, and they will not permit their employees to subject their treasury to these great fines.

The Interstate Commerce Commission, or some of the Commissioners, also testified that rebates had disappeared.

So that disposes, I think fairly, of the first proposition.

Now, as to the second—rebates which are unreasonable per se. The advocates of this measure, so far as they have touched upon that point, have admitted, with more or less precision, that rates unreasonable in themselves scarcely exist. They say there may be here and there a case, but that practically they have disappeared.

The Interstate Commerce Commission, or some of its members, I am not clear which, made a public announcement not long ago that rates not unreasonable in themselves had practically disappeared.

So, then, of the three principal purposes of the original interstate-commerce act, two have been accomplished. There remains for you to deal with the third principal subject, namely, rates which are in themselves reasonable and become unreasonable relatively by comparison with rates made from other districts to the same points of destination, or from other points of origin to the same point of destination, or, again, possibly, unreasonableness with respect to erroneous classification.

That is the subject, and I think it is fair to say that the question has narrowed down to that point. We may brush away all of these arguments that cover the universe, the whole face of the earth, the whole face of our country, and deal with this one question of rates relatively unreasonable.

What is proposed as the remedy for relatively unreasonable rates that may possibly exist, that doubtless do exist in some form, to some extent, somewhere?

Granting imperial power to the Interstate Commerce Association——

Senator FORAKER. Interstate Commerce Commission.

Mr. BIRD. Commission; thank you. The other one is a phantom.

There is a remedy already provided, under which or by means of which every original producer, consumer, shipper, or body politic, or bona fide association of workers may obtain a correction of the evil complained of, if it is found to be real. But there is a fear with all friends of that that the means already provided will prove at least unsatisfactory because of the length of time required to get a decision. It is plain that a person or persons complaining of this inequality may find his remedy under the existing law at the expense of the Federal Government. That removed one great burden of complaint brought to your attention, Senator, during the early discussion of the Cullom bill.

It is not possible for the railway companies to wear out a petitioner. Having a lawyer hired by the year, and all that sort of thing,

with which you are familiar—all that has been removed. The only question as to the existing conditions or reasons for changing existing conditions may be, in my judgment, stated thus: Possibly the process is a little tedious. If the hearings before the Interstate Commerce Commission could be expedited in some way, possibly that would be a remedy to which the people are entitled. But no remedy can be justified which deprives the owner of railroad property of the due process of law.

It is not my intention to discuss this principle from a legal standpoint, but to call your attention to one phase of this question. The one privilege, the one right which accrues to the owner of railroad property is the right to make and to collect a reasonable rate for the service rendered. When you take away that right, in whole or in part, you take away his property. All that we contend for is that we may have our day in court under expedited methods. The provisions of the law to-day, so far as the court figures in the case, are sufficient. There is a provision for expediting hearings, I understand.

The testimony of nearly every proponent of this measure, and I think the questions that some of the Senators have asked of witnesses, lead clearly to the conclusion in the minds of this committee or of some of the members that the power sought under the Esch-Townsend bill to make rates is not a power which it is supposed can be exercised or will be exercised except in isolated cases—only now and then. It is admitted that no commission that can be created can, in the nature of things, make the tariffs of the country or any considerable portion of the country. There are not days enough in the year nor years enough in the life of a commissioner to half complete that work.

The question has been asked me, and I have heard it asked of others frequently since my stay of nine days in Washington, What has given rise to all this public clamor for this legislation? It has been admitted that there is more or less public opinion in favor of legislation.

I think I may, with due modesty, claim to be in as close touch (if not closer touch) with the people and requirements and demands of the people as any member of any State legislature, and probably, with few exceptions, any member of the National Legislature. It has been my whole life for forty years. The regular programme day after day and year after year has been complaints and petitions. We know the producers, we know the manufacturers. Mr. Chairman, the railway companies are in such close touch with this class of people that they certainly do know the public opinion, the public demands.

I have read carefully, and as attentively as possible, all that is printed in all the leading daily papers of the Middle West and Far West concerning the pending measure; and the newspapers and the orators that are so much committed to this measure, that have served so to inflame the public mind, base their entire argument upon the absolute necessity of stopping all rebates. The Standard Oil Company, like Banquo's ghost, will not down, and you may read in the newspapers all over the land such editorials and articles as would convince an unthinking man that the Standard Oil Company was continually in the receipt of rebates. Mr. Chairman, I do not be-

lieve that any official, agent, or employee of the Standard Oil Company has received a rebate since 1887.

I am not an advocate of that company. There is no reason why I should be. I refer to it because it is one of the leading so-called "trusts" of the country and because it is used so invariably as a wicked example.

I have read lately in many leading and influential newspapers of your own State, Senator Cullom, about the beef trust, and you can always read between the lines everywhere that the beef trusts are getting rebates. I do not believe it. As a representative of the various competing lines engaged in carrying that sort of traffic, I think I would know if they were getting rebates from other people. I assure you that there is not a line in any system which I represent that does have any rebates.

But the public mind has been turned to this idea: The rebate is the wickedest thing under God's heavens. I do not deny that, so far as transportation is concerned. Therefore we must pass this bill, and there is not a word, not a line, not a thought that touches the subject, that furnishes the fuel for all this controversy with reference to the Esch-Townsend bill. I beg you to believe that that is so, and I believe your own information will confirm what I say in relation to that matter.

Whence comes this agitation? Mr. Chairman, I have been situated so that my business, the most vital part of my business, requires me to be in attendance at all the hearings of complaints, from which has grown this present measure, and if the Senators will bear with me I want to give them some light on that subject.

This present agitation, which includes also the same agitation going on in the State of Wisconsin and which had become in that State a political question, as it is a living issue between the two factions of the dominant party, commenced with Mr. E. P. Bacon. I beg to go on record with respect to Mr. Bacon. I have known him over twenty years. In his private life he is a Christian gentleman, and I can say no more than that for the best man that ever lived. But his own interests, the interest of communities which are rivals to his community, have blinded him. The real difficulty, I must confess, began in 1884, or thereabouts, upon the building of the Chicago, Burlington and Northern Railway along the western boundaries of the State of Wisconsin, running into Chicago, but not into Milwaukee. It was accentuated by the building of the Illinois Central up through the middle part of Wisconsin. The cause of complaint was that the rates on grain to Milwaukee on various lines in different portions of the State were no less than from the same point of shipment to Chicago, a rival market. Mr. Bacon is not a producer. He produces nothing. His income as a commission merchant comes from the rake-off. The commission merchant as such is a valued member of society and his duty is a very necessary one. It was Mr. Bacon who commenced this agitation.

The rate on grain, as the Senator from Illinois knows, and as you gentlemen who have inquired know, is dominated by the lake rates and canal rates for eight or nine or nearly ten months in the year. Grain goes by lake to Buffalo and is taken thence by canal and river to the Atlantic seaboard at an exceedingly low rate prescribed by the legislature of the State of New York. The Illinois Central or

the Chicago, Burlington and Quincy says: "You know that the rate from Chicago to the eastern market is just as high as it is from Milwaukee, and you know that if I change that rate as much as one-half a cent a pound I do not get any business." And it was true. Selfish motives, which more or less influence every man, induced me to make the change desired by Mr. Bacon's committee, which would have been beneficial to the St. Paul Company, which I then represented.

Senator FORAKER. I do not quite understand you. You say that the rates to Milwaukee were the same as the rate to New York?

Mr. BIRD. No; the same as to Chicago. The rates from Chicago and Milwaukee to New York were identically the same, so that the Chicago market and the Milwaukee market dominated in that part of the State and over common territory. If the Illinois Central did not make the same rates from central and western Wisconsin that we made to Milwaukee they were out of the business. I argued with the committee of the Milwaukee Board of Trade and with Mr. Bacon himself year after year, and he failed to accomplish his purpose. If the grain went to Chicago, Mr. Bacon would get no commission on it, or if, by virtue of some old association with the country shipper who consigned to Mr. Bacon, he had to send it to Chicago, then he had to divide his commission.

Senator FORAKER. That is, he wanted all the grain of Wisconsin brought to Milwaukee?

Mr. BIRD. Precisely.

Senator FORAKER. Instead of having part of it go to Chicago over these roads?

Mr. BIRD. Yes, sir.

Senator NEWLANDS. It was a longer distance.

Mr. BIRD. In most cases the distance to Chicago was 60 or 75 miles farther than to Milwaukee.

Senator NEWLANDS. Of course Milwaukee was farther away from New York than Chicago.

Mr. BIRD. No, sir; Milwaukee is nearer to New York by water transportation, by 85 miles, because Milwaukee is on the way from Chicago to New York; but the rates were precisely the same from Milwaukee and Chicago to New York.

Senator NEWLANDS. But by railroad it would be farther?

Mr. BIRD. What I intended to say was that the rate on the all-rail route to the cities of the East has been the same from Milwaukee as from Chicago.

Senator FORAKER. From Chicago they ship by rail altogether, do they not?

Mr. BIRD. In certain seasons there are large shipments from Milwaukee which go through Chicago, but the rate is the same.

Senator FORAKER. But no shipments go from Chicago by water?

Mr. BIRD. Yes; to Buffalo.

Senator FORAKER. They have to go a roundabout route.

Mr. BIRD. Up through Lake Michigan and right by the port of Milwaukee. But the rates were uniformly the same to all the eastern markets.

Senator NEWLANDS. Chicago is farther from New York by water, but nearer by rail.

Mr. BIRD. By the difference of 85 miles.

Senator NEWLANDS. But the rail rate to New York from both Milwaukee and Chicago has been the same.

Mr. BIRD. In other words, both as to rail transportation and water transportation, Chicago and Milwaukee were common points in trunk-line territory to all north Atlantic seaboard points.

Senator NEWLANDS. What do you mean by the term "common points?"

Mr. BIRD. Where the same rates prevail.

Senator NEWLANDS. I do not quite understand yet. What did Mr. Bacon object to in that arrangement?

Mr. BIRD. "Your distance to Milwaukee is less than it is to Chicago, and we want a less rate;" in other words, we were waging an unjust war. He seemed to be determined to make us put our rate down.

Senator NEWLANDS. That was not true as to the railroad distance, was it, but it was true as to the water distance?

Mr. BIRD. I beg your pardon.

Senator NEWLANDS. I understood you to say that Mr. Bacon's contention was——

Mr. BIRD. Take western and central Wisconsin, the great producing territory, the distance from which to Chicago was a little in excess of the distance to Milwaukee, but from which the rate to Chicago and to Milwaukee was the same, because when you got to the Chicago or Milwaukee market, then the rate from either port to New York by trunk lines to Atlantic seaboard points was uniformly the same.

The next case which underlies all this agitation is one that has frequently come before the House committee as well as before this committee, and I want to state the case as briefly as possible.

Senator NEWLANDS. Please go back to that controversy. I understood you to say that you yielded to Mr. Bacon's view.

Mr. BIRD. No; I beg your pardon. We did not want to yield, because it would have been beneficial to the St. Paul Company. It could have afforded to carry the grain to Milwaukee at a little less rate than it could have put the grain in its elevators, and if the railroad company had continued to earn money thereon until it was disposed of, then when any portion of the grain went out by rail we would have had the opportunity to have the advantage of the other 85 miles.

Senator NEWLANDS. Why did you not do it? What was the reason?

Mr. BIRD. Because the Illinois Central Railroad and the Chicago, Burlington and Quincy Railroad, the successor of the Chicago, Burlington and Northern, took the ground, which I verily believed then and yet believe to have been just: "We will make an equal rate; we will make our rate so that we will be on a parity with Milwaukee—no more and no less." I believed that that was a defensible position. The commissioner of the State of Wisconsin believed that it was a defensible position. But in all the controversies there was not one word of objection or of fault-finding or of criticism from the producer. The only thing the producer could have complained of was that he had the benefit of two markets.

The next case which is of material importance to this subject is known as the Milwaukee Chamber of Commerce case. Let me

describe briefly the line of the Chicago, Milwaukee and St. Paul road: The line runs due west from Milwaukee across the State, and then continues clear across the northern tier of counties in Iowa and clear to the Missouri River; in the southern tier of counties of Wisconsin there is another line running a little northwest from Milwaukee to La Crosse, and then west down to the counties through Minnesota and out into the Dakotas. About two-thirds of the way from the Missouri River to the Mississippi, on a line running due north and south, is the city of Minneapolis. The Minneapolis mills dominated the wheat market, the great spring-wheat belt. Mr. Bacon and a few of his followers—perhaps not more than two or three—contended that the rate to Minneapolis bore an unjust relation to Milwaukee, or perhaps it was that the rate to Milwaukee bore an unjust relation to the rate to Minneapolis. If no other railroad had to be considered than the Chicago, Milwaukee and St. Paul, perhaps that contention was right; I mean, if that road constituted the only means of transportation in that country. Complaint was filed before the Interstate Commerce Commission against the Chicago, Milwaukee and St. Paul Railroad for this discrimination of relatively unreasonable rates. Immediately the Chamber of Commerce of Minneapolis intervened and became a party defendant. Minneapolis was the millers' market; it dominated the whole wheat belt, or dominated the prices. They intervened because it was a vital question. I discussed the subject with the Commission myself, and I confess at this day that my view of that subject was a narrow view. I was in sympathy with the effort to change the relation of rates, doubtless because it appeared to me to be to the interest of the company which I represented.

The Commission made a ruling, not as to the specific rates to the respective competing markets, but a ruling that we should determine the rate of differences. The rate per se was not at any time in question. It was the difference. Upon the receipt of the order of the Commission we called a conference of our competitive friends in southern Minnesota, Iowa, and South Dakota, for the purpose of revising our rates and to put them in line with the order of the Commission, but we found it imposible to do so. No action was taken. The case was heard and reheard. There were three hearings.

Now, I want to illustrate the very heart and core of the difficulty which attends this question of rate making. The Chicago, St. Paul, Minneapolis and Omaha road put in its defense, and the very reasoning or logic for a change of rate of the Milwaukee and St. Paul road, applied to the Omaha road, would require an equal change in the rates in favor of Minneapolis. The rule was reversed, for this reason: The St. Paul line was the long line to Minneapolis and the short line to Milwaukee, whereas the Omaha line was the short line to Minneapolis and the long line to Milwaukee. Whatever reason of force or justice there was against the St. Paul road applied to the Omaha road, which dominated a large portion of that territory, and would have required it to vitiate the order of the Commission. There were two forces working in opposite directions. Whatever was true of the St. Paul road was true in the opposite case with the Omaha road.

I went before that Commission in company with the representatives of every railroad that was a defendant or an intervenor and was

authorized to state, and did state, to the Commission at a formal hearing that: "We have not been able to adjust our tariffs in conformity with the order of the Commission. We have tried faithfully, and now I say to you, on behalf of all these gentlemen—and if anyone dissents from my announcement make it known now—if the Commission will make the tariff for that country these railroads will adopt it without question."

Senator CULLOM. What commission was that?

Mr. BIRD. Mr. Knapp was chairman.

Senator CULLOM. You mean the Interstate Commerce Commission?

Mr. BIRD. The Interstate Commerce Commission.

Senator CULLOM. I thought you were referring to some State commission.

Mr. BIRD. No; this was an interstate case; it was Dakota and Minnesota shipments to Minneapolis and Milwaukee.

Senator NEWLANDS. When was that? What year?

Mr. BIRD. I can not tell you. It is of record. I made that announcement and it was ecquiesced in by every railroad representative present. The commissioners disclaimed any ability to make that rate. After a brief consultation, Chairman Knapp said: "The Commission is not competent to make that tariff. You are the rate makers; try again." And we tried again and we failed. Then there was a third hearing.

At that third hearing, on behalf of the different roads, I made this further proposition: "We will allow the Minneapolis Chamber of Commerce and the Milwaukee Chamber of Commerce each to appoint a committee of three representative men, and if they will sit down here and make a tariff in line with the original order of the Commission, and agree upon it unanimously, we will adopt that tariff." They did not agree.

As Mr. Hiland stated to you, I think, during the late part of the session—he is now my successor on the St. Paul road—in a portion of the territory where there was scarcely any controversy, they did agree, but in the Northwest it was impossible to agree.

Senator CULLOM. They failed?

Mr. BIRD. Yes, sir. In a small area we were able to make some changes in line with the decision.

That case has been cited ever since its inception. It has been brought to every tribunal, it has been thrust upon your attention as a glaring instance of the inutility of the Interstate Commerce Commission and the unwillingness of the railroads to be governed. I say there never was a more false statement ever made in connection with this general subject than that.

Senator CULLOM. The truth was that you all failed?

Mr. BIRD. We all failed.

Senator CULLOM. The Commission and everybody else?

Mr. BIRD. The same reason that would have compelled the St. Paul road to reduce its rate to Milwaukee would have compelled the competing road to reduce to Minneapolis. The relative rates would have been unchanged, but they would have been below a fair rate of compensation.

Another case to which your attention has been called, I think, since the last sitting is the Eau Claire lumber-rate case. I refer to that not wholly because of its particular bearing, but because it has also a

strong bearing upon another case of which a good deal has been made by Mr. Bacon in the presentation of a petition from some lumber association. The Board of Trade of the city of Eau Claire brought complaint against the Milwaukee and St. Paul road because its rates on lumber to Missouri River points were unreasonably high in comparison with the rate from Winona to the same points of destination. There was no other road involved in the complaint, but many other roads that were vitally affected by the proposition became intervenors and were heard. This complaint did not come from any manufacturer of lumber, from any salesman of lumber; it came from the board of trade, and their reasoning was, "This differential is so great that it limits the manufacturer of lumber in our city; it limits the number of employees in our city; it tends to tear down our business prosperity." The lumber was, in fact, going from Eau Claire down the Chippewa River to the various milling points and lumber yards on the Mississippi River. It did not go by rail. The lumber was sawed and then dropped into the river, but was not stacked, and therefore the men who would have been employed in stacking were not employed, and the population was by so much destroyed. That was the reasoning.

The Commission heard the case and made a ruling which, if the Chicago, Milwaukee and St. Paul had been the only road interested, would have been an eminently just decision. The decision was based largely on the mileage and the geography of the St. Paul road. But the rates on lumber from all that great producing country in northern Wisconsin and central Wisconsin at one time were in groups, a group of mills here, another there, and close together, not always on the same railroad, though it necessarily took the same road to the same destination. They were what we call "group rates." No one ever contended that they were unfair rates because the mill at Eau Claire would have the same rate that a mill 10 miles across the country would have; the logs go down the same rivers and to the mills to be sawed.

The St. Paul company accepted the ruling of the Commissioners in good faith. It would have added to the railroad traffic of the St. Paul road if that order had been obeyed. But the same rule which was brought to bear against the St. Paul company, if applied to its competitors, would have compelled them to make a less rate than they had ordered the St. Paul to make. It was a case precisely parallel with the Minneapolis wheat-rate case. It was dealing with the only railroad in a country in which the roads were interlaced beyond conception, so that, instead of dealing with the whole situation, they dealt with a single road, and their orders were inoperative. There would have been just as much legal obligation on the part of the Omaha road to reduce its rate as there was upon the St. Paul, so that the effect on the Northwestern, if applied, would have been to keep lowering the rates in this way all the time down to the destructive point, and the relation of rates could not have been changed.

I will go outside of my notes and take up in this connection the papers filed by Mr. Bacon in regard to the Wichita lumber case. I hope I shall not weary the committee, but I want to make clear the underlying causes of complaint.

Lumber produced in the South—in Arkansas, west Louisiana, and

Texas—is grouped just as it is all over the land, as cattle and grain rates are often grouped, so that there is an infinite number of producing points.

The CHAIRMAN. Can you give the distances of those groups from the market points?

Mr. BIRD. I can not carry them in my head, Mr. Chairman.

The CHAIRMAN. Can you approximate how far out the grouping would reach?

Mr. BIRD. To the Missouri River, Kansas City and Omaha, and to Wichita the rates from all points in southern Arkansas are the same.

The CHAIRMAN. And the distances?

Mr. BIRD. The distances vary.

The CHAIRMAN. I know they do, and that is the reason why I want to get at the distances from the shipping points. Does the first 200 miles take a certain rate, the next 200 miles a certain other rate, and so on?

Mr. BIRD. They are not grouped in zones specifically. I will try to cover that later. I can not come to it specifically now, but I will try to explain that further along.

Senator NEWLANDS. They are in the nature of what they call "postal rates," are they?

Mr. BIRD. No, sir.

Senator NEWLANDS. The same rates, I mean, regardless of distance?

Mr. BIRD. Oh, no. I beg your pardon, Senator. The same rate for the same destination, but not the same rate to all points. They are grouped. The southern half of Arkansas is in one group. Some groups are located on one line and some on other lines. There is only one line from that part of the country, a long line to Kansas City—the Santa Fe—and for a small portion or a number of these groups this line runs through Wichita.

The rate to Kansas City from that territory is 23 cents, as stated, and the rate to Wichita is 4 cents more or thereabouts, I think, as stated, so that you have a 23-cent rate to Kansas City and a 27-cent rate to Wichita. But for the larger number of carriers from the central points in the lumber-producing country the distance to Wichita is not substantially less, and in fact it is some greater than to Kansas City. But by the Santa Fe, against whom the complaint was made, the distance to Wichita is substantially less than it is to Kansas City. It is the interdependence of the railroads that created this condition.

Within the last three or four months I have gone through a hearing before the Commission in a case which presents the same identical principle. That was sugar from New Orleans to the Missouri River points and to Topeka, Hutchinson, Salina, and various jobbing centers in the interior of Kansas. The controversy was, as usual, between the railroad and the middleman, who sought to receive and distribute goods to the consumers.

Senator NEWLANDS. Do you find that these controversies are generally raised by the men who simply handle the goods as commission men or middlemen or that they are generally raised by the producers themselves?

Mr. BIRD. If you will permit me, Senator, I will strike out the word "generally." They come from the men who are middlemen—who

are jobbers. I do not deny the jobber—the real commercial man—the right of protection by the law, but I want it to be made plain that the controversy does not come from the man that pays the freight. It does not come from the man who sells or buys the goods—ultimately, I mean.

The differential against Wichita, as compared with Kansas City, on New Orleans sugar was 15 cents a hundred. There had been a great controversy, running back eight years, or perhaps longer, as to what that should be, because the building of new railroads changed and made new conditions from time to time, and it was a matter we fought and quarreled over and hated each other about for years. It had varied from 3 cents a hundred against Wichita up to 15 cents. The case was tried last fall. The hearing came within eight days of the summons, and the decision came within two weeks of the hearing. The Commission ruled that the difference in rate might be 8 cents from New Orleans to Wichita; that is, the Commission allowed a differential against Wichita, Salina, Hutchinson, and Topeka, and all those towns of 8 cents a hundred. This differential, which Mr. Bacon held up to you as a shining example of the wickedness of the world, is 4 cents. The Commissioners made it that rate. We did not know what was fair. In all the making of rates, considering cross lines, going around junction points, and all that, we did not know what was right. There is nothing in the interstate-commerce law that sets up any standard by which we could determine what was a fair rate.

I want to say right here that in all these controversies we are left to act upon our own judgment. We can only form a judgment by discussion of the subject until we understand all the commercial requirements, the cost of tracks, and all that, and then we must guess at it. That is what the Commissioners must do.

The CHAIRMAN. Did the Commission give any reason for its discrimination against Wichita?

Mr. BIRD. No, sir.

The CHAIRMAN. It gave no points to indicate what its reasoning was?

Mr. BIRD. No, sir; none that I recall.

The principle is the same identically in the lumber case, except that the differential was exactly 100 per cent greater than the differential the railroads had made on lumber.

Senator NEWLANDS. What has the Commission done regarding the lumber?

Mr. BIRD. Nothing; it has never been appealed to the Commission. Nobody has gone to the Commission with it. I do not know of a single presentation of that subject by any traffic manager in all the territory involved. If there has been any, I never heard of it.

Senator NEWLANDS. How does it come before us for discussion?

Mr. BIRD. Just as a great many other things come before you, from phantom trade organizations. It is all phantom.

Senator NEWLANDS. Is it simply presented here as an illustration of the injustice of rate fixing by the traffic managers?

Mr. BIRD. No, sir; it is presented as a makeweight.

We want to get to the question of what has created this demand. After the failure of the Wisconsin Case by Mr. Bacon, after the failure of the Minneapolis and Milwaukee Chamber of Commerce Case, our good friends of that class commenced to organize the Inter-

state Commerce Law Association, because the law provides that any body politic or any association or any individual may be heard. This is the force behind the cowcatcher that is intended to give forward pressure to this movement.

Mr. Chairman, I know how that association was formed. My rate clerk was hired from me to be the secretary of that association at one time. He did not know any more about the principles of a tariff than the ordinary layman. He was a nice gentleman, and worked hard for his money, but he had to find reasons for complaint, because upon his success in finding such reasons depended his employment.

Senator CULLOM. That was when he was in your employ?

Mr. BIRD. He left me and went over there, after one or two changes of his own, and was hired in that capacity.

A clerk in Minneapolis—I can not call his name—was the solicitor of flour shipments. His duty was to drum the flour district—this was years ago, Senator Cullom, perhaps five or six or seven years ago—and he is the principal annex of the Interstate Commerce Law Association. They have organized associations such as that described to you yesterday by the gentleman from Iowa, whose name I have forgotten—a middle-aged gentleman—who said he had never heard of this manufacturing association of Dubuque; that he had lived there for forty years and had never heard of the association, and did not know the names of any of the people connected with it; and yet he was a thorough business man and had lived forty years in that little city. That is so in every case. If you will take the list filed here and included in this record of the constitutent bodies of the Interstate Commerce Law Association, you can not find one man in one hundred that knows the difference between a rate, a tariff sheet, and a time-table. I know this is true. These are the men who have created this agitation.

Senator NEWLANDS. Do I understand you to contend that these local associations which form the constitutent bodies of the Interstate Commerce Law Association were simply organized in order to aid this movement, or were they existing commercial bodies?

Mr. BIRD. No, sir; there is not one spontaneous organization. Our whole country is filled with legitimate bona fide trade bodies. There are two in Chicago—the Chamber of Commerce, which deals mostly in grain and farm products, and the Merchants' Mercantile Association.

Senator CULLOM. And the Merchants' Club.

Mr. BIRD. Aside from that is the Manufacturers' Association of the State of Illinois, a reputable body composed of men of conservative spirit, men who are public spirited and who are working in harmony with the railroads until such time as they come to a deadlock, when they go right to the Commisison with their complaint specifically stated, and they get a hearing. These are not the men who form this body. There is not a man in all these constitutent organizations that could earn 40 cents a day——

Senator FORAKER. I think your statement is stronger than the facts warrant, if you will allow me to interrupt you. I notice the associations represented as signers to that petition that Mr. Bacon filed with us from Ohio includes the Cincinnati Chamber of Commerce,

which is as old, almost, as the city of Cincinnati, and the Cincinnati Receivers and Shippers' Association, which is also an old organization.

Mr. BIRD. If you will allow me to interrupt you, I think you will find that some employee of that chamber of commerce has been made a delegate, without any thought or understanding on the part of the chamber of commerce as to what it means. They have gone so far as to get representatives from some of these larger bodies, men who were inspired by their bodies, and they simply say: "Oh, well, this may be a good thing, and we will let So-and-so go and represent us without instructions."

Senator FORAKER. You do not fully understand the question. I am inclined to think you are right about that; but the gentlemen who represent the Cincinnati Chamber of Commerce and the other organization to which I have referred—the Cincinnati Shippers' Association—are very prominent merchants in Cincinnati and they are reputable men. This subject has been under consideration before the chamber of commerce a number of times, and quite recently, and they do know the side that they think they ought to be on, at any rate. How far they have gone into the discussion of the subject is another matter.

Mr. BIRD. Well, I made my statement somewhat broad; but in the main it is true.

There is another proposition which I think needs attention.

Senator NEWLANDS. Let us test this a little bit——

Mr. BIRD. I can not answer from memory now. I want to amend what I said, if you will let me correct myself.

Senator FORAKER. Certainly.

Mr. BIRD. I want to go on record with an impartial statement. At its inception the Interstate Commerce Law Association was constituted as I have described. Whether in the later days it has succeeded in drawing in representative men here and there I can not say.

Senator FORAKER. If you will allow me to interrupt you a little further, at Cincinnati this subject has been an acute one for a good many years, and the Cincinnati Chamber of Commerce and the Shippers' Association have been actively prosecuting complaints which they preferred before the Interstate Commerce Commission of discriminations against Cincinnati, especially in the rates fixed for their southern trade; and they are pretty well informed on the subject, and I have no doubt they did join, at the very beginning, perhaps; and they are as worthy men as we have in our State—the men who are represented in this association.

Mr. BIRD. I want to make it appear from the record that my remarks applied to the Interstate Commerce Law Association at its inception. It has gathered some weight, doubtless.

Mr. Bacon, I think, left with you a memorandum showing the rate on a carload of oats, said to be the rate from Omaha to Baltimore, of 13½ cents. I tried to get a sight of that paper, but failed to do so. No one seemed to know where it was. My impression is, and my belief certainly is, that that was the rate from Chicago to Baltimore on a car of oats which had been received from Omaha; and in that connection he cited the rate on a carload of flour, 24½ cents from Omaha to New York or Baltimore. The flour rate was correctly

stated. The rates on grain from Omaha and all points west of the Mississippi River to the Atlantic seaboard are greater on wheat and flour than on coast grain; and I was not able to see what relation there could be between a car of flour and a car of oats, except that east of Chicago they are classified the same and take the same class rate. Westwardly they do not. The rate on corn, oats, rye, etc., from Omaha to Baltimore, via New York or via St. Louis, is 23½ cents per hundred pounds, and to New York, Boston, and other points it is proportionately higher. That is because of what is known as the "seaboard differential," 1 or 2 cents. I think the export rate on oats from Chicago to Baltimore is 12½ cents, and as nearly as I can recollect the domestic rate is 13½ cents.

Mr. Bacon laid a great deal of stress upon the discrimination which was practiced in the giving of a lower rate on wheat for export than is charged on flour, and showed by that means the discrimination against the United States millers in favor of the millers in foreign countries. He referred you to a decision of the Interstate Commerce Commission which virtually admitted the right to make from Chicago to New York a rate on wheat of 2 cents less than the rate on flour. That was either domestic or foreign. That differential rate allowed by the Interstate Commerce Commission was based on the representations made to them as to the difference in the cost of the service. The modern car is loaded to its utmost capacity with bulk grain, and a load of eighty to ninety thousand pounds, and sometimes a hundred thousand pounds—not of wheat, of course, but eighty-odd thousand pounds of wheat—is loaded in the modern car from Chicago to New York. The flour comes from Minneapolis and St. Louis, principally—Minneapolis is the chief flour market—and flour is not loaded to that extent. It becomes troublesome and expensive to stack a car of flour to the roof. Nearly all export flour is handled in sacks. Domestic flour is largely handled in barrels. That was the principle upon which that differential was made. But there was a higher power that determined this matter—the lake craft, the lake carriers—who are subsidized, and practically furnished a free right of way by Congress. They make a low rate on bulk grain and it is the dominating rate. They do not make any such low rates on grain products. They do not seek to carry flour at any such rate and they will not do it. Flour is handled largely for export in double bags and it is subject to more damage; it costs more money to handle it than it does to handle grain. In the case of grain, they run the vessel alongside the elevator and the grain falls in, and at the destination the vessel runs alongside the dock and the grain is pumped out. That is not true of package freight. So the rates on grain are made by the railroads, not as low as the rates made by water lines, but approximately so. It is the force of competition which Congress protects—probably wisely protects—that makes the condition which Mr. Bacon complains of. It is not in the power of Congress under the present laws, and it certainly is not in the power of the Interstate Commerce Commission, to afford any protection in that district for the Minneapolis millers. You can not do it.

Senator NEWLANDS. Take that case of oats, where the rate was 13½ cents, I believe.

Mr. BIRD. Yes, sir.

Senator NEWLANDS. And the case of flour, with a rate of 24½ cents.

Mr. BIRD. No; the rate was 13½ cents from Chicago to Baltimore, and on flour 24½ cents from Omaha to Baltimore—500 miles farther haul. I do not say that car of oats was rated from Chicago only. I say I believe it was. I could not find the paper. There was a low rate from——

Senator NEWLANDS. I thought this flour was from Minneapolis?

Mr. BIRD. No, sir; I think not.

Senator FORAKER. I understood Mr. Bacon to say that the wheat was for export.

Mr. BIRD. It was not a car of wheat.

Senator FORAKER. It was a car of oats; but he said the rate was the same.

Mr. BIRD. It is not the same from points west of the Mississippi River or west of Chicago.

Senator NEWLANDS. It is not the same to the seaboard?

Mr. BIRD. It is from Chicago eastwardly; but the rates join there at Chicago and at St. Louis and the two make the complete rate.

Senator FORAKER. What he said was that the oats rate and the wheat rate were the same.

Mr. BIRD. I understood him to say so.

Senator FORAKER. Yes.

Mr. BIRD. And in that he was mistaken, to some degree.

Senator NEWLANDS. Let me ask you: By water what would the difference be between the oats rate and the flour rate?

Mr. BIRD. Oh, I do not know. They do not come in competition by water for the long hauls.

Senator NEWLANDS. The flour does not?

Mr. BIRD. The lake lines do not, as a rule, haul flour. They do occasionally, but it is not in a dominating or material way. It does not dominate the rate situation. They are not competitive factors in that respect.

The attention of the committee, Mr. Chairman, was called to the difference between the domestic rates to and from the various ports and the inland portion of the foreign rates on the same class of business. In other words, that the rate from Kansas City to New Orleans on export grain would be materially less than the local or domestic rate from Kansas City to New Orleans for local consumption. Mr. Bacon claimed that that was a positive discrimination against the American producer and consumer, and what he said on that subject was calculated to lead you to understand that he demanded or expected a provision of law which would forbid the railroad companies carrying export or import freight at lower rates than those which are charged for domestic freight. I want to show just what that would do. I can do it in a moment.

The rate to the principal European ports, especially to England, from all the principal points in the United States, from the great Mississippi and Missouri valleys, is made to New York on the theory of the domestic rate being applied and the addition thereto of such commission rates as are obtainable, and it is upon that combination that the through bill of lading is issued. As we can get down into the Missouri Valley through Sioux City, Omaha, and Kansas City,

in the great grain-producing country, the application of that rule will close the Gulf ports; it will cripple if not close the south Atlantic ports, because the obtainable rates from the Gulf ports, say, to Liverpool are, I will say, from Galveston and New Orleans, 150 per cent of the rates from Baltimore and Norfolk or Newport News.

The CHAIRMAN. Fifty per cent higher?

Mr. BIRD. That is the basis upon which import rates have been made, but I am not sure that it is the basis upon which export rates are made, because the classes of freight in use are different. It is manifest, however, that the difference between New York and New Orleans on grain rates to the European ports is very wide.

Senator NEWLANDS. The distance via New Orleans is much longer, is it not?

Mr. BIRD. It is much longer and, in some respects, more difficult. There is 120 miles of Mississippi River navigation included.

Senator FORAKER. Climatic conditions enter into the matter, do they not, also?

Mr. BIRD. They affect grain at the germinating period of the year.

While those disabilities at New Orleans do not apply to Galveston—that is, the traversing of the Mississippi River up and down, 120 miles each way—the distance is greater.

If the same rule of giving ten days' notice of an advance and three days' notice of a reduction attaches to export and import business that does to domestic business, then I say most emphatically, by reason of the fluctuating and higher rates to and from the southern ports, those ports would be closed for that traffic. Nobody knows it better than the gentleman who brought that subject before you.

Senator NEWLANDS. You contend that the policy pursued by the railroads tends to preserve the business of all of these ports?

Mr. BIRD. I think it not only tends to preserve it, but that it is the salvation of that traffic, unless it is desired to turn the traffic all in one direction, through one port, regardless of the conditions or cost of transportation from the producing territory to other ports.

Senator FORAKER. That is, to abolish the differentials that are now allowed would have the effect of turning the traffic through one port, as you say?

Mr. BIRD. Yes. If domestic rates were to be charged for the inland haul on export business, then that export traffic would go to the port from and to which the cheapest Commission rates are available.

Senator NEWLANDS. Mr. Bird, assuming that that is the fact, and that it would cause a readjustment of business as to the ports that would be under a disadvantage if the system was changed, would you contend, if we were starting at the very commencement of a system of transportation, that it would be wise to build up the ports that did not have the natural advantages possessed by some of the great ports in the country?

Mr. BIRD. If it was the beginning of the traffic, and we were going to start anew, there would be no ports already built up.

Senator NEWLANDS. But there would be a port that would have the natural advantage that you speak of, such as New York?

Mr. BIRD. But New York has no natural advantage that I know of.

Senator NEWLANDS. It has the natural advantage of being nearer to Europe than New Orleans or Galveston, has it not?

Mr. BIRD. But the question would be whether you wanted to develop the whole country or only a part of it.

Senator NEWLANDS. That is what I was inquiring about.

Mr. BIRD. I should think the true policy is to develop the whole country, because I believe Mr. Cleveland said: "The soil of any State is the soil of the United States."

Senator NEWLANDS. You think if we were just entering upon the threshold of a transportation system of this country that it would be a wise policy to adopt the methods that are now pursued?

Mr. BIRD. I think it would be wise, if we kept in view the purpose or desire to build up the whole country. When you make traffic travel to one single market you create a monopoly which will be felt in every corner of the land.

Senator FORAKER. We have appropriated a great many hundreds of millions of dollars for the improvement of harbors on the theory that we were going to build them all up.

Mr. BIRD. Yes; even making Houston, Tex., a port of entry. Steamboats are coming up to Houston for cotton, and it is beneficial to Texas.

Senator CULLOM. Is it not good for the country?

Mr. BIRD. Yes, sir.

Now, I want to approach the matters which were presented to you by our esteemed friend, Governor Cummins, a very estimable gentleman, who represents the State of Iowa, all its interests and industries and all of its people. He thinks that the only remedy for the one evil that is left, according to our own showing and his own showing, relatively unreasonable rates, is to vest power in the Commission to make rates, upon complaint, when the case is found to be meritorious. But he said that he does not want a distance tariff; that it is impossible that the measure as drawn would result in making any great number of rates; that it would only be necessary to make rates here and there, in extreme cases. He says we can not have a distance tariff. He complains that the manufacturers scattered all through his State are handicapped greatly in their efforts to get to points outside of the State. His distance tariff, which, by the way, is a minimum as well as a maximum tariff, is calculated and was especially declared at its inception and passage to be for the purpose of protecting the Iowa jobber against interstate jobbers.

Senator NEWLANDS. When you speak of a minimum as well as maximum tariff, do you mean to say that there are two rates, one a minimum rate and the other a maximum rate, or that the rate itself is the fixed rate?

Mr. BIRD. The rate itself is the highest and the lowest, because the measure providing it declares what is an unjust discrimination, and it goes on and enumerates a dozen or more things that are declared to be unjust discriminations, and prohibited—among other things that you shall not charge a higher rate from a given point of departure, or to the same point of destination in one direction than is charged on like traffic from the same point of departure or from any other point of origin in another part of the State; so that if we make the rate on coal 100 miles from some station on the Burlington road to Dubuque that is the maximum rate which the railroad may charge for a like service over any other hundred miles in the State. The law

is drawn very tightly. By the way, I want to correct a statement that has been made in respect to Illinois rates. The principles of the Illinois law are very similar, but, for reasons which I will state, they have not been enforced.

Governor Cummins says that he wants all these little manufacturing towns throughout the State to have just as low rates to all points on connecting roads in adjoining States as other people have. Those rates are the chief cause of complaint. You can not get into Minnesota, you can not get into Nebraska, you can not get into Missouri, or Illinois, or Wisconsin on what they consider to be a reasonable rate. He says repeatedly that the Commission is not expected to make rates in a wholesale manner; but let me ask you to multiply the number of manufacturing towns in the State of Iowa by the number of separate and distinct articles which are manufactured, and multiply the product of that by the number of every station in southern Minnesota, in the States of Wisconsin, Illinois, Missouri, Kansas, Nebraska, and that is the narrowest limit of his demand, to get into those States, and what is the grand total? He wants every manufacturing town in the State to have just and reasonable comparative rates to every station on every railroad in every adjoining State. If he is right in anything at all; if he was clear in any of his demands, in any of his suggestions, it was upon that point. Now, there is no body of railroad men, there is not any body that can be constituted, that could dispose of those questions in any one year. And when they are once disposed of in that territory it is only the beginning. I do not seek to magnify the result of empowering the commissioners to make rates. I want to speak within due bounds.

This is not a nightmare. It is a living, real fact. The competition between all these rival towns, with their little boards of trade and mercantile associations, is the rivalry which creates the most valuable and the most forcible competition in the land. It is local competition of the manufacturer and the producer. Each one, like the individual, is willing to get any advantage which he thinks he can get from the law or the Commission, like Mr. Nelson Morris, who, when before the first chairman of the Interstate Commerce Commission, Judge Cooley, testified under oath that he was opposed to all forms of discrimination except such as was in his favor. Now, that is the keynote. If you confer this power upon the Commission can you conceive a greater avalanche than the avalanche of complaints and petitions which will be filed under that provision? I certainly do not magnify this proposition. I want to state it mildly, but take Governor Cummins's proposition and you have the whole thing in a nutshell.

I want to say one word about Governor Cummins, with all respect to Governor Cummins and Senator Cullom, the author of the interstate-commerce act. That which underlies all of Governor Cummins's complaint, in my humble opinion, is caused by the provisions of the Cullom Act.

Let me illustrate, if you please: Take the lines from Chicago to St. Paul. I do not want to present a fictitious case. I want to present a living issue, one that I have been, in the language of the day, "up against" since 1887; one which has brought me into contact with every shipper and mercantile association in the Northwest in

that time repeatedly; and I speak within due bounds. The distance from Chicago to St. Paul and Minneapolis by the two shorter lines—right diagonally across Wisconsin, up the Mississippi River—is 400 miles.

Senator KEAN. Which is the shorter line?

Mr. BIRD. The Chicago and Northwestern is 400 miles, and the St. Paul is 410 miles. The distance from Milwaukee, which is a common point, a point common with Chicago to St. Paul, is 325 miles. There are five or six other lines running between Chicago and St. Paul and Minneapolis, one on the extreme east, and north is the Wisconsin Central, running up along the west shore of Lake Michigan for a portion of the way, and coming across northwesterly into Minneapolis. The other extreme one, as I recall it now, was the Rock Island line, known as the Albert Lea line, running out through Rock Island and Davenport and up through Iowa in the central part, and crossing from there to Minneapolis and St. Paul at Albert Lea before coming north from the southern portion of Minnesota. Now, the rate on first-class goods——

Senator KEAN. Then, there is the Burlington road.

Mr. BIRD. That runs in between. I am describing the outlying lines, the border lines, forming the boundary of a certain territory. One boundary is the Wisconsin Central, on the north and the east, and the other one is the Rock Island, on the south and west.

Senator KEAN. The Burlington runs up along the river there?

Mr. BIRD. Yes, sir. Of course the Burlington and the St. Paul and the Northwestern run in between. But here is a great ellipse. The width of it from the extreme northeast to the southwest of that territory, which has St. Paul maximum rates, is 350 miles, and in that territory the maximum rate is the Chicago and St. Paul rate. That rate runs through Des Moines, by one line, to Chicago. Another road runs from Chicago to St. Paul by the way of Fort Dodge; so that in this great oval strip of territory, 400 miles long and 350 miles wide, the maximum rate from St. Paul to Chicago is the maximum rate at all the intermediate points. The rates are not complained of in the main as unreasonable, but it is their application. When a merchant or jobber of Des Moines ships to any point in that territory, either in northern Iowa, southern Minnesota, or eastern and southern Wisconsin, he comes to a merchant to whom he wants to sell goods, and he finds that that man has the same rate to and from Chicago to his town that Des Moines has from Chicago to his town. That is not the fault of the railroads. It is the legitimate enforcement of the law, against which no railroad in the Northwest ever protested—not materially so, at any rate. The long and short haul clause, which prohibits a higher rate in the aggregate for the shorter distance than for the longer, the shorter being wholly within the longer, is enforced. The only exceptions I know are the transcontinental rates, which I will refer to later, and in the territory south of the Ohio River and east of the Mississippi.

Senator NEWLANDS. Is that the case throughout the country?

Mr. BIRD. I know of only the two exceptions. I do not think that there are any other exceptions. In all my experience I know of no others—the southern territory, which has its system of basic rates, and then the transcontinental rates, which are made regardless of the intermediate distance, in some cases, by the Commission.

Senator NEWLANDS. And in all other cases under your observation——

Mr. BIRD. The original fourth section is observed.

Senator NEWLANDS. The rate for the shorter distance——

Mr. BIRD. Is not greater in the aggregate.

Senator NEWLANDS. Than the rate for the longer distance?

Mr. BIRD. If the shorter is included wholly within the longer.

Senator CULLOM. I am trying to find out whether I was right or whether Governor Cummins is. I want you to go on with your argument.

Mr. BIRD. Yes, sir. I will suggest a remedy for that condition, if you please.

Senator CULLOM. Very well.

Mr. BIRD. The jobbers and manufacturers of the city of La Crosse buy their raw material in the East, coming through Chicago to La Crosse, and they sell goods at various towns west of the Mississippi—in Minnesota and Iowa. When they get their goods into La Crosse they ship them out again to towns, such as Albert Lee, for instance, geographically and technically tributary to La Crosse, and they find that Albert Lee has the rate from Chicago that they have. That is the wide sweep of the application of the fourth clause of this law.

So it is, and so you will find that these claims of relative discriminations—that is, the published ones, the ones that are manifest in the tariff—are traceable in large part to these conditions. You will find that in the attempt to apply the strict letter or principle of the law to one railroad, when it is applied another railroad comes in under different circumstances and different conditions and different geography and we apply the same rate to that road and vitiate what we have done in the first place, as in the Eau Claire lumber case and in the Chamber of Commerce Case.

Those are facts. They have been rubbed into us year after year. I do not pretend that there are no relatively unjust rates. I presume there are. But there is a remedy for it, if they will only go at it the right way, according to law. There is no trouble to get justice in this country, and there is nobody, no body of men in all the wide country so amenable to public opinion as the average traffic manager. We learned in 1861–1865 one principle—that you can not operate a railroad in an enemy's country.

There is a remedy for Mr. Cummins's complaint. There is a remedy, at the mention of which they hold up their hands in horror—the application of a distance tariff. Take Governor Cummins's demand that every manufacturing town in the State of Iowa shall have just and reasonable comparative rates to every station on every railroad in every adjoining State. Why, Mr. Chairman, the tariffs it would take to make that would fill this room. And they will want a board of railroad commissioners to make those tariffs. I say that the moment that power is conferred upon the Commission there will be such an avalanche of business that no body of men can give proper attention to it.

There is one more point in connection with that upon which I wish to touch, although I am afraid I am trespassing too much upon your time.

Senator CULLOM. As I understand you, the one remedy for the

interstate-commerce law to satisfy Governor Cummins is to make an absolute mileage tariff?

Mr. BIRD. No, sir. I do not refer to, nor do I have in mind, any necessity for any remedy against the interstate-commerce law, but I do say this, that the matter complained of by Governor Cummins can be regulated and satisfactorily settled, I presume, according to his view, by the adoption of a distance tariff on interstate traffic.

Senator FORAKER. What would be the effect of that?

Mr. BIRD. It would be like the effect of a lawn-mower over a lawn—a dead level; a tariff in one part of the country that is higher than circumstances will permit the railroads to haul the property at a profit and in another case a leveling of rates below what the railroad can afford to do it for. You have got to strike an average. If you strike the lowest watermark, if you make a tariff so low as to fit the conditions in the most cheaply operated territory, like the trunk line, you would bankrupt every railroad in the country. You know that. That is not a far-fetched statement. If you fit a distance tariff to the requirements and necessities of the New York Central and the Pennsylvania Railroad, you would not have money enough on the St. Paul road at the end of a year to pay the wages of the men. You would not have enough money to pay the interest. You would not have enough money to do anything with successfully.

Now, then, if you make a distance tariff——

Senator FORAKER. What would be the effect on the producers of grain and live stock in Iowa?

Mr. BIRD. Just what the effect of the Iowa law is upon the average Iowa jobber and merchant—to say, "Thus far, and no farther." With towns 50 miles apart, you can go half way only.

Senator FORAKER. They would be limited in their markets, you mean?

Mr. BIRD. Yes, sir.

Senator FORAKER. With a distance tariff they could not successfully go to the New York market in competition with nearer people producing the same commodities?

Mr. BIRD. No, sir; nor they could not go to the West or to the South or to the North. It would isolate all parts of the country—separate them.

Mr. Chairman, reference has been made at some of these hearings to a complaint of the Chicago merchants, a reputable and responsible body of men, by the Illinois Manufacturers' Association, a body of great influence and usefulness in the community. I have heard those complaints. I have been with them and argued the cases and reasoned with them. They have been before the Illinois commissioners time and again. They have had it called to the attention of the various governors of the State from time to time, and no remedy has been found for these troubles, and I beg for the time to tell you why that is so.

The Illinois law as drawn, as I understand it and construe it, is very similar to the provisions of the Iowa act in declaring what is an undue and an unjust discrimination. I think that literally carried out it would be a distance tariff, pure and simple. It is referred to continually as a "tariff of reasonable maximum rates." I think

that is its official title or description. It has been construed as being purely a maximum tariff; but the conditions that have existed in Illinois for forty years have made it impracticable or unwise to carry that out technically and apply it technically in the sense that your short-haul rate determines in some measure your long-haul rate—I do not mean but the long and short haul clause is observed, but in the same rate per ton per mile, you understand. The great eastern trunk lines dominate the territory north of the Ohio River and east of the Mississippi River. Originally their termini were at Buffalo and Niagara Falls and Pittsburg and on the Ohio River. Their feeders were roads over which they had no financial control; but the life of those roads depended upon their working amicably with their eastern trunk-line connections.

In 1874, it was found by the trunk lines that they were by the conditions in competition with the lake carriers from Chicago east, making such low rates, and attempting to maintain relatively higher rates from interior and more distant points, that a young man who was a clerk in the New York Central office, by the name of McGraham, conceived a scheme, which was announced and discussed and adopted and has been in operation ever since to this moment. It is known as the "McGraham scale," and is based upon the Chicago rate to New York. Figuring upon the basing rate, the initial rate, the rate from Peoria was 110 per cent; from the Mississippi River on trans-Mississippi business it was 116 per cent, and so on all the way down.

If you follow the line of the eastern boundary of Illinois running south, you will find in all the whole extent of that State southward the distance to New York is substantially the same as from Chicago. Consequently the 100 per cent rate point governs at that place. At Danville, Ill., for example, it may be 102 or 101 per cent, but it is substantially the Chicago rate from Danville. That kept all these agricultural products from going to Chicago on a local road and going out by water. It insured to the trunk lines the same rate per ton per mile for their carriage from their western termini to their eastern termini, shipments coming from St. Louis, as they got from Chicago. It was a beneficent thing for the trunk lines. It kept the traffic off the Lakes.

Another word about this condition: The merchant of Chicago wants to ship his goods to Danville, and he finds just what Governor Cummins found, that when the freight got to Danville, having paid its rate from New York to Chicago, it had to pay some rate to get to Danville. Then he found a man that had just as low a rate from New York as he had. At Springfield and Decatur and those thriving interior cities of Illinois you will find the same relative conditions. Lincoln has a rate of about 110 cents. I do not recall the exact percentage, but it is on that theory.

All that country, then, is put on this pro rata basis—more than the distance tariff, understand; greater than the distance tariff. It is the same rate per ton per mile for the long haul as for the short haul. That is all, but it is a great detriment to Chicago and all other manufacturers in northern Illinois. They find that Indianapolis, Cincinnati, Terra Haute, Columbus, Buffalo, and these interior cities have from the West a rate to those same points proportionate to their distance—not an exact prorate—so that the east and west line, the

rates eastwardly and westwardly to all interior central States, to manufacturing points as well as to the trunk-line territory, have substantially the same rates they have. There is the embarrassment. It is a most serious curtailment of the Chicago area of distribution. The same thing is true of grain. Take grain all along the Illinois Central Railroad, which is the standard road, the pioneer road, well known by everybody, and a great agricultural road as well as a manufacturing road. How can the commission merchant in Chicago get that grain and ship the grain to Chicago when he has got to sell it to his New York customer, nine times out of ten? How can the middleman get his rake off? This has led to what we call special tariffs, that are lower between Chicago, Danville, Springfield, Decatur, and a host of those interior cities that are less than what is known as the legal maximum rate. And then comes up another man and says: "You are hauling from Chicago to Danville at 75 per cent of the tariff you are allowed to charge, and charging me full tariff." There is the long-haul tariff applied in one direction, and on the other hand an effort to build up our greatest cities, and we meet with all the difficulties which are created by the application of a just principle.

Mr. Chairman, I want to tell you something about railroad rates in the State of Missouri. It touches upon a political question, and I do not think it inopportune or improper to refer to it here. You may have heard that Missouri, from all time past in history, has been a Democratic State until very recently when, with the exception of electing a Democratic governor, the whole State went Republican. And thereupon arose one of the most dreadful controversies that I have ever seen with respect to public utilities or railroad rates. I do not know which party it was that initiated the proceedings, but they introduced a concurrent bill in the house and senate, drawn by the same man—under different names, however—and for the same identical purpose. It was to put the other party in a hole. That is what it was for. If they could carry the bill, so much for them. If the other party defeated it, so much better for them. That, I verily believe, was the real cause for that bill. That bill fixed rates. It is a legislative tariff. It fixes the rate on all carload commodities hauled under the classification.

The CHAIRMAN. Does it fix the absolute rate or the maximum and minimum?

Mr. BIRD. Practically both; but in all cases it is described by the legislature as a reasonable rate. If the State can compel the railroads to accept it, the railroads have the right to enforce it to its limit. That bill reduces the rates of Missouri about 40 per cent. I stood, as many others did, before the joint committee of the house and senate, in open session, and I plead with them to consider what they were doing; that it was not at all reasonable to assume you could reduce the income of a road 40 per cent and leave it in a position to do business properly. The idea was agitated and very strenuously urged that under the then existing rates the State traffic did not pay the cost of operation. I plead with the members of that committee to avail themselves of the right guaranteed by the State to investigate the books and accounts of the railroads of the State and assure themselves whether or not the roads were earning any net *proceeds* or any net profits, or even if they were earning their ex-

penses. No; that was not in the programme. The bill passed and the governor signed it, and that is the law of the State to-day.

Senator NEWLANDS. You say that that bill has reduced the rates on the average 40 per cent?

Mr. BIRD. Yes, sir.

Senator FORAKER. What is the effect of it?

Mr. BIRD. I can not tell you until we try it.

Senator FORAKER. How long has it been in force?

Mr. BIRD. It has just been approved by the governor within the last sixty days. I do not remember exactly when it passed.

Senator NEWLANDS. They do not rely upon a commission to fix the rates in that State, then?

Mr. BIRD. They have a commission, and they have had a commission all the time that had the power to fix rates; and the commission took up the matter of rates repeatedly, and the railroads, in order to keep the peace, compromised and brought the rates down and reduced and reduced their rates. They reduced them last summer, at the request of the commission, before there was any thought of this legislation; and on top of that the legislature has reduced the tariff 40 per cent.

Senator FORAKER. Is that a horizontal reduction?

Mr. BIRD. They name specific rates.

Senator FORAKER. Did the legislature name specific rates 40 per cent lower?

Mr. BIRD. It is a legislative tariff. The legislature itself named the rate for each 10, 25, 50, or 100 miles, and so on, in each class.

Senator NEWLANDS. It is a very elaborate tariff, and does it have the usual classifications?

Mr. BIRD. The classification is our usual western classification, but its articles——

Senator NEWLANDS. It is a distance tariff, is it?

Mr. BIRD. It is a distance tariff, pure and simple.

The CHAIRMAN. It went into effect June 17 Mr. Ramsey says; or May 17, I believe it was.

Mr. BIRD. I think it is effective May 17.

Senator NEWLANDS. I suppose a distance tariff does not involve so many items, does it?

Mr. BIRD. Yes; it covers every item that is covered by the transportation of a railroad.

Senator NEWLANDS. But it does not have to cover every station?

Mr. BIRD. No; all you have to do is to take a straightedge and measure off the distance between two towns, and apply the tariff to find the rate.

Senator NEWLANDS. In that way a distance tariff would be much shorter than any other tariff?

Mr. BIRD. It is very deceptive. Mr. Bacon has said, in regard to our coming here with a presentation of our objections to the pending measure, that he is familiar with the cry that this legislation will stop railroad development and railroad investment. He said that he has heard that cry repeatedly over every question of State legislation. Well, he has. I have heard it. He says that notwithstanding that the States have legislated and have reduced their rates, and that the roads have gone on building and building and building; and that is not so. I do not believe you can find a single railroad in the State

of Iowa, of Minnesota, or Nebraska, or Kansas, or Missouri, or Arkansas, or Texas, or any of the great Missouri Valley States or the coast States where building has been done, except to extend the lines that are dealing with interstate traffic. I do not believe that there has been any railroad of any magnitude started in any of the Western States, such a road as would depend in whole or in part and largely upon State traffic. The great trunk lines of the West have run out branches here and there, and, again, and at various places, have built down to complete gaps, to complete and round up their great interstate systems.

Senator CULLOM. Illinois is pretty well supplied, is it not?

Mr. BIRD. I think it is.

There is one more point that I want to discuss, and it is the most important to which I shall ask your attention, if I can present it clearly—the Texas live-stock cattle rate. Certain live-stock commission merchants of Chicago, as well as some of the cattlemen of Texas, are organized and have employed Mr. Cowan for their counsel. Mr. Cowan has appeared time and again before the Interstate Commerce Commission, before the House committee, and before this committee, as I understand it. He complains that the rates on live stock from Texas to St. Louis and Kansas City are unreasonable per se; that we have raised the rates; that we have raised the rates time and again; and that the rates are entirely unreasonable, oppressive, excessive, extortionate, and all that.

Mr. Chairman, I have heard a great deal before the Interstate Commerce Commission and before State commissions as to reasonableness of rates, of trying to figure out what a reasonable rate on a given article may be. I have had question after question put to me as to how you undertake to make a tariff rate. Do you figure how much return you shall have for your company, how much money your company shall earn per annum? There never was a more foolish question. It looks good on the outside, but on the inside there is nothing in it. There is no royal road to rate making. It is not one of the definite or exact sciences. It is a matter of evolution. Classification is the essential part of rate making. When I first commenced in my humble capacity as bill clerk at an Illinois station, at the town of Pana, the classification was printed on the back of a bill of lading no greater than the size of an ordinary sheet of letter paper, and the page was not full.

There are three prominent classifications in the United States, known as the "western classification," including Chicago and St. Louis and west of the Mississippi to and including the Pacific coast; one known as the "official classification," from Chicago eastwardly, from the Mississippi River eastwardly north of the Ohio River; the third principal classification is known as the "southern," and applies in the territory south of the Ohio River and east of the Mississippi.

I spent three years as a member of a committee which was engaged in an effort to make for the country a uniform classification. It failed. There were 15 members, representing all parts of this country, the Republic of Mexico, and the Dominion of Canada. They were joined in an effort to produce a uniform classification. That is aside, however. We failed in that undertaking.

Senator CULLOM. You could not make one?

Mr. BIRD. We made one, to the best of our ability, but it was not found satisfactory—it failed of application. They would not do it.

Senator CULLOM. My recollection is that I saw that you came very near agreeing, some years ago.

Mr. BIRD. The committee agreed, and made a unanimous report, but it did not fit. In the western classification there are 8,500 items. The official classification is much more simple, and contains only six classes, and things are grouped in a different manner; it contains 4,600 items. I do not know how many items there are in the southern classification.

I said that rate making is not reduced to a scientific basis. It is not an exact science. Rates were made by evolution, by comparison, by competition, and by compromise. They have grown up from this little classification, no bigger than a sheet of paper, to over 8,000 items. When there is a discussion as to what is a reasonable rate on any article, there is but one way to determine the reasonableness of that rate. It is difficult. It is exceedingly difficult. First, is the railroad earning an undue profit on a total business? If it is found in the affirmative, if it is clearly determined that it is earning an undue profit, the next question, and the really vital question, is: Upon what item of traffic is it deriving that surplus revenue? We do not know what proportion of our traffic is drawn from any particular item or classified article. We can not know. The statistics must be so voluminous that they would be made useless. The real, the best, test is to compare in a general way your revenue, and see whether the road in earning too much, and in most cases it is found in the negative; then see if there is an undue relation or prominence to some article. That is the way, in brief, in which rates must be made. I see no other way.

I wish to say a few words in regard to the matter of rates on cattle from Texas, about which we have heard so much through every channel of investigation known to the shipper, through the hired attorney, through every commission, State, interstate, and all that, and before this honorable committee. An article or object of transportation should be charged with some reference to its value. In other words, the declaration that has been considered in past years so obnoxious, so offensive, is the true standard of rates—that which the traffic will bear, not that which you can squeeze out of it, but what it will bear with the least burden. And when you come to consider what the burden is you figure on its value, or what the service is worth considering its value.

The principal contention has been concerning the rates from Texas to Kansas City, St. Louis, and other markets. I had a few hours to devote to this subject as I came through Chicago a week or ten days ago, and I wish to illustrate that point as bearing on this case; and I cite this case because it has been brought to you in some form or other from the beginning. It has been urged before the House committee time and again, and I understand it has been before the Interstate Commerce Commission for two or three years. Fort Worth, Tex., is a central or representative point. The dominating market for cattle in that territory is Kansas City, and I have some figures relating to that particular traffic between those two cities to lay before you.

I will take first the rate on a carload of corn. It is hardly a fair specimen, because corn was a little lower at that particular time, but the railroad rate on corn from Fort Worth to Kansas City was 24½ per cent of the value of the car of corn at the point of shipment. The rate on a carload of cotton ties, a staple article used in the greatest wholesale manner in the South, is 29 per cent of the value of the carload of cotton ties. On fruit the rate is 26.6 per cent of the value; on nails, 26.3 per cent of the value. I am speaking now of the published tariff rate and the current value of the goods at the time I made these figures.

Senator CLAPP. Just a minute, there. How much of the complete transportation of those goods does that include?

Mr. BIRD. From Fort Worth to Kansas City, or vice versa. It is between those two markets. Some of these articles came in one direction and some in the other.

Senator FORAKER. A distance how great?

Mr. BIRD. I can not tell you. Probably it is 500 or 800 miles, perhaps. Perhaps it is farther than that.

Senator CULLOM. It is really not that far, is it?

Mr. BIRD. Nearly a thousand miles, I think. It is a good ways.

The CHAIRMAN. Eight hundred miles, anyway?

Mr. BIRD. Yes; I think nearly a thousand miles.

Continuing this statement of the percentage of the rates to the value of the goods: On wire the transportation charges were 24.7 per cent of the value; on barred, band, and sheet iron, 32.2 per cent; on hay—which is very seldom shipped that distance—40 per cent; on lumber, 36 per cent. Now, there is no contention about these rates. Take lumber as an example. The rate to Kansas City is unquestioned, or from Kansas City, in either direction, and the rate is 36 per cent of the value of the property. Now, on cattle the rate is 13 per cent of the value. On hogs it is 10.3 per cent of the value. On sheep it is 11.6 per cent of the value.

The CHAIRMAN. Will you file that paper that you have there with the committee?

Mr. BIRD. I have a great many matters here that are foreign to the subject. I have given to the secretary the computations that I have been able to make in that direction.

The CHAIRMAN. Have you the data there in regard to a carload of dry goods—for instance, of silk?

Mr. BIRD. Of course the rate would be an infinitesimally small percentage.

The CHAIRMAN. Of the value?

Mr. BIRD. Yes; because of the high value of the goods. And such goods are not carried by carload, but exclusively by the hundred pounds, no matter in what quantity they are shipped.

If we have to carry a carload of brick—and the rate is very low per hundred pounds—the rate would be 261 per cent of the value.

The CHAIRMAN. Of the brick?

Mr. BIRD. Of the brick. Of course it could not be shipped. But the rate on brick is a specimen, a fair sample of the rate on analogous goods; the rate is so high and the distance so great that those goods are not interchangeable. Besides, they are always made near the consumer.

I submit that there is sufficient evidence right there, assuming the

accuracy of my figures, to prove that the rate on cattle is too low; that the rate on cattle is so low that the actual cost of transportation is taxed against some other traffic. There is no traffic in the world that I know of subject to railroad transportation, unless it be dynamite, where the rate is so low in percentage as compared with the value and the care which must be exercised in handling the business. Live stock is the only article the shipment of which requires the railroads to furnish especial accommodation for that particular business. It is the only article that I know of in the West—in the Middle West, the agricultural countries—that requires so universally the return haul of an empty car; and yet these cattlemen come before every tribunal they can reach and claim that the rate is unreasonable in itself and relatively unreasonable. I submit that these figures make it hardly worth while to discuss that feature of the case.

The other branch of this subject, which began the whole issue, started in Chicago with the stock commission merchants. The claim with regard to dressed beef versus live stock emanated from there. The men were deprived of their commission because the packers at Kansas City buy from first hand and ship their goods direct to the consumer. The other is largely in regard to grain. The middleman is being eliminated. Now, the modern method of handling grain is this: You take all the great trunk lines, or agricultural lines, such as the St. Louis, Northwestern, Missouri Pacific, the Rock Island, and the Burlington, and all to the western extremity of the grain-producing district, and instead of hauling that grain into the nearest market and letting it be subject to a commission rake-off there, and then be forwarded to the next market and be subject to another commission there, they have adopted and instituted a system—the public, not the railroads, have done this—of what I call line buyers. A man of sufficient means or credit goes out on the Burlington or the Union Pacific, and those great grain-producing roads, and starts a line of little country elevators, having a capacity of ten or fifteen thousand bushels, and he buys from the farmer. He has his elevator at the eastern portion of the territory and he buys this grain and sells it direct to the foreign consumer, and he does not pay one cent of tribute from the time he takes it from the farmer's wagon until he delivers it to the consumer. He pays no tribute except the cost of transportation. He has his own elevators, and where they are necessary he has accumulating elevators or concentrating houses, and in many cases he has his own ships. This man goes to Chicago, and for instance down the Lakes and the St. Lawrence River, or by water to Buffalo and by canal before it goes by rail, or it goes out by New Orleans, and the commission merchant as such is wiped off the slate; he is practically gone; his occupation is gone. It is that class of men that make these complaints. It is hard on the commission merchant, who has his rights. But shall we change the existing status of things merely so that he may take his profit as a middleman out of that business?

Senator CULLOM. He buys the grain and makes what he can out of it?

Mr. BIRD. No; the commission merchant, as a rule, does not buy grain. He receives it on consignment, to be sold to the best advantage.

Senator CULLOM. This man that goes out on the various lines of road buys the grain?

Mr. BIRD. They are line men, and they buy the grain from the farmer and send it straight to the consumer.

Senator NEWLANDS. The commission merchant is going out of business?

Mr. BIRD. He is being pushed out.

Senator NEWLANDS. Which way of administering that business is best for the farmer?

Mr. BIRD. The way that attaches the least cost to the handling of the grain.

Senator NEWLANDS. And that is what?

Mr. BIRD. That is by having no middleman, no intermediary. That is the way, in order to get the greatest return.

Senator NEWLANDS. Is there any such system as enables these men who hold these local elevators at different places to practically control the price of the wheat?

Mr. BIRD. No more than the control which comes by legitimate investment; no more than the control which enables the man who owns a big packing house to kill a great many more hogs at a cheaper rate per hog than the man having a small consignment to handle.

In conclusion of what I have had to say, this is an enormous business. The measure which is urged upon you will create a vast change in the method of handling the business. The railroad business is stupendous in its magnitude. It touches the closest interests of every man, woman, and child in this country. Especially it touches closely the producer and the consumer. Now, in the name of all that is fair and just, do not experiment with it, if there is a reasonable remedy for what is complained of.

I wanted to say a word in regard to private cars, in consequence of testimony given by Mr. Lincoln, the general freight agent of the Missouri Pacific.

The CHAIRMAN. We will hear you on that after recess, Mr. Bird, if that is agreeable to you.

Mr. BIRD. Certainly.

Thereupon the committee took its usual noon recess.

AFTER RECESS.

The CHAIRMAN. The committee will now hear what you have to say, Mr. Bird, about refrigerator cars.

Mr. BIRD. There has been much said, Mr. Chairman, about the private car system. I think that term is erroneously used—that what it means is not thoroughly understood.

The CHAIRMAN. Are you president or vice-president of any refrigerator car company?

Mr. BIRD. I am vice-president of the American Refrigerator Transit Company, which is not a private car line. It is exclusively the property of the railroads. I represent the Wabash, the Iron Mountain, and the Missouri Pacific in traffic affairs. I represent all of their traffic interests, and that puts me in the position of supervision of every one of their instrumentalities of transportation.

Senator CLAPP. What is the name of that private car company?

Mr. BIRD. It is the American Refrigerator Transit Company, com-

nonly called the "A. R. T." That is not a private car line. I, as an fficer of the Missouri Pacific, with other traffic managers, make that ariff on all goods, no matter how carried, and that tariff applies also o property carried in the refrigerator cars.

Senator CLAPP. Does that A. R. T. Company charge any more for cing that the railroad over which its cars move charges for icing?

Mr. BIRD. I will explain in a moment, if the Senator will permit ne. The railroad company makes a rate at which all property is ransported in refrigerator cars, but, in addition thereto, it makes a harge for refrigeration which is handled by the officials and traffic nanagers of the refrigerator company under the general direction f the owners of the company, which are the three railroad corporaions I have named.

Now, as to the use of the cars which are generally termed "private ars." They should be divided into two separate classes: First, the rivate car, refrigerator or other, in which the owner of the car ships is own products.

Senator CULLOM. For instance, Armour & Co.?

Mr. BIRD. Partly Armour & Co. Armour & Co. have two sysems. Say Swift, or Nelson Morris, and the Armour Packing Comany.

The other class of private cars are the cars owned by individuals r private corporations, who employ those cars in the service of other eople. In other words, they sell refrigeration on wheels. Armour Co. own both classes of those cars. They have a large number of ars, I don't know how many, which are placed on the railroads round the country. The compensation for the use of those cars is, irst, mileage, which the company that uses them pays, and whatever rofits there may be in the refrigeration.

The first class of private cars are the cars owned by the persons vho ship their own freight, such as big box cars for the woodenvare manufacturer, or for the buggy manufacturer, or agricultralmplement maker, who manufacture goods that are so bulky that ou can not get a satisfactory quantity into the standard railroad ox car. They own perhaps some hundreds of cars that are suitable or their big traffic.

Then come the most notable, the packers' cars, owned by the big acking companies that are able to have their own cars under their wn control.

In all private cars used by their owners for their own traffic, if the rofits which the railroad pays them for the use of those cars (in ther words, the rate of mileage)—if that rate is only a just comensation for the use of the car, its cost and average durability conidered, then I do not conceive how there can be any injury to any erson, except in this: That as between a small firm not able to own ts cars and a large competing company that is able to own its cars, he latter have an advantage. But the question for you to determine is whether that is any undue or unjust advantage, for the railoads have to work upon the theory that they are obliged to haul hose cars for the companies provided they are of proper construction nd safe to run.

Senator CULLOM. There is some question about supplying cars vith ice.

Mr. BIRD. Yes; but the owners of private cars using them for their own freight supply their own ice, as a rule, having ice houses along the different roads. In other cases the icing is done by the railroad companies, which pay the wages of those who perform the labor, and that is charged over to the owner of the property.

The greatest trouble I have had my attention called to, which has been quite widely discussed by the people and newspapers of Chicago, at a recent hearing, or in consequence of some recent hearings, is this: It is contended that the price that is charged, made by the owners of the cars to the shipper of fruit, for instance, is extortionate. I do not know anything about it, because I have no means of ascertaining. But this ought to be considered, and this information is gathered from our own experience in operating our own cars. If the committee care to know about it, I can state very briefly what we consider to be the governing facts in determining what should be charged.

As I said before, the A. R. T. Company owns its own cars, for the use of which at any time the railroads pay, and those cars are open to everybody, and whoever has the use of them pays the refrigerator company for the refrigeration.

Senator KEAN. Are the rates published when they make contracts?

Mr. BIRD. No; I am speaking of the A. R. T. Company. I answer for no one else. The chief business at this time of the year is the freight business on fruit, the handling of fruit and vegetables from the southern States—the producing States—to the market. At this time our cars are nearly all concentrated in Texas for the movement of fruit. We move a large number of strawberries at this season. The cars are accumulated down there in advance of the season so as to be ready for the demand. We estimate the demand. We must. There are some very burdensome laws in Texas, operating severely upon failure of companies to furnish cars in so many hours' time for use, so we have been obliged, under the laws of Texas, to buy an enormous quantity of fruit that would spoil because we could not accumulate sufficient cars to transport that fruit. So, as I say, we concentrate at a certain place a large number of cars, so as to have them ready for the demand when it comes. The refrigerator companies' employees receive the fruit. They load it into the cars themselves in order that it may be so loaded as to protect it in transit. For instance, there are little strips put on the crates or boxes, so as to permit of circulation of air to every part of the car.

The car is refrigerated from twelve to twenty-four hours before it is loaded. The ice is all consumed long before the car starts, and then it is renewed. The car is not allowed to be loaded just when the freight comes, because if it is loaded when the car is too hot and that car is taken a thousand miles the ice would be all melted and the fruit spoiled. The temperature must, in the first place, be made low enough by the use of ice. So that the labor connected with all that loading and refrigerating has to be taken into consideration. The shipper does not load the fruit. The refrigerator company does that, because it is necessary to have the temperature of the car just right before the loading commences. Where the distance is long enough to justify it, the time of transit is extended and the car is stopped at an icing station and the bunkers are refilled, so as to preserve a steady temperature of about 40°. So that the refrigeration charge

means a good deal more than the cost of the ice that goes into the car after it starts with a load.

On this point there seems to be a great lack of proper understanding in the mind of the public. The A. R. T.'s 4,000 to 5,000 refrigerator cars are able to be concentrated at various seasons in various parts of the country, those cars being needed at one season of the year in the North and at another season in the South, so that the total cost to the shippers is only about one-third of what it would be if each company had to own and operate a sufficient number of cars to accommodate the shipments from points along its line. It is the concentration and supply of cars according to the seasons and as the demand changes. I do not mind saying to the committee that out of that 4,000 or 5,000 cars we earned an income last year of between $25,000 and $40,000 for the refrigeration charge. But that includes all these items of labor, idle cars, and all that.

There are a large number of roads leading out of Chicago. There is the Chicago and Eastern Illinois, running into the fruit country down on the Illinois Central. Those roads do not have a sufficient number of cars to meet the demand in the brief period of the year in which the demand exists. It may be that at a certain point there will be only one month in the whole year when there is a rush, but if a railroad company had to furnish a sufficient number of cars to meet such a sporadic demand as that, for the remainder of the year 90 per cent of their cars would be idle. So the railroad companies look to the equipment companies and private car companies, whose business it is to furnish cars for just such a demand. I understand that Armour and Swift use their own cars exclusively. Perhaps the owner of cars could not afford to put his cars at a certain place upon a certain demand if to-morrow some other fellow's cars would displace his.

Senator CULLOM. Suppose these private cars do belong to a company, ought they not to be under a regulation just as the railroads generally are?

Mr. BIRD. I believe they are, under the law, if construed properly.

Senator CULLOM. They do not believe that.

Mr. BIRD. I know it; but those cars are an instrumentality of transportation.

Senator FORAKER. If you think they should be, why should not they think so?

Mr. BIRD. As I construe the original act requiring tariffs to be made public, the shipper must pay for everything from the time it starts until the journey is ended.

Senator CULLOM. If a person ships in one of those cars fruit or anything that requires refrigeration, you think he ought to know in advance what rate he will have to pay?

Mr. BIRD. I think so. I think he ought to know in advance just what he has to pay, and I think very likely he does know in advance. I believe he does. But the contention is that the charge for refrigeration is excessive. In the case of shipments of strawberries for 150 miles it costs more for the icing than it does for the freight, as I have been told. I do not know whether that is true or not. I presume it is. If a lot of cars must be sent down, say, to Jonesboro, in Illinois, where the fruit comes with a rush, the cars must be concentrated in that neighborhood so as to be ready for the fruit as soon as it comes in, and the cars must be in a refrigerated condition when they are to

be loaded. If they are loaded first and refrigerated afterwards, it would ruin the fruit. The car must be cold before taking fruit into it. It may be that the contention is based upon a lack of knowledge of the cost of movable refrigeration, construction, expensive cars, short life of the car, by reason of the continual soaking—the floors are always wet when in use. It may be that all these things would tend to justify these charges. I do not know, and I have no means of judging, but that is a feature of the case that ought to be considered when you legislate.

Senator CULLOM. Do you think any additional legislation is necessary to put these cars under legislative control, or under the control of a commission, just as railroads are?

Mr. BIRD. Everything is under control of the Commission with respect to private cars, unless it be the right of the Commission, or some other factor which you may designate, to regulate the price of refrigeration to the same degree that you regulate the price of transportation. That is the only question that I see.

As to the cars which are used by the owners for the shipment of their own traffic, if you will allow me to refer to Kansas City, Atchison, St. Joe, and Council Bluffs, great packing towns, various railroads are in there competing for that traffic and each road says, "I am entitled to my share of the traffic." In the case of cars suitable for the shipment of fresh meat, each railroad would be required to own as many cars as would be necessary to take care of what they thought would be their share of that traffic, and if every road owned cars on that basis then the aggregate number of cars owned would be ten or fifteen times as many cars as are required to take care of the business now. That is not good economy, and there is no good result to come from such overburdened ownership.

The only question is whether those cars used by the owners for their own business have been receiving too large compensation. The Middle States and Western States receive three-fourths of a cent a mile. The railroads pay each other a per diem charge of 20 cents. The question is whether there is a fair comparison there, because in the matter of railroad equipment it is purely a reciprocal arrangement. If the Missouri Pacific puts its cars on the Burlington and gets 20 cents a day for the use of the cars, on the other hand the Burlington cars when used by the Missouri Pacific should receive the same compensation. So that I think the per diem charge used universally in the West is not a fair criterion, possibly, for the private cars. It is a matter of calculation which must be difficult for the educated operating officer, who knows all about the process, the original cost, expense of maintenance, expense of operation, and so on, to arrive at a fair compensation for the use of that car.

There has been one other case cited that always creates a good deal of attention—oil cars. Until very recently there were very few oil cars, tubular tank cars, except those owned by the Standard Oil Company. To mention the name of that company in some parts of the country is like shaking a red rag at a bull. But it is a fact that carbon oil is not a fit article to be transported in an ordinary freight car. It ought to be prohibited. It is dangerous. So that the safest way to transport carbon oil is in these cylinder tank cars.

What is true about the supply and demand for cars for packing-house products is also true about oil cars. The Standard is not the

only company that owns tank cars. I think they are allowed three-fourths of a cent per mile; that is the rate charged. They assume that that is a positive advantage to a big shipper.

Senator FORAKER. He is allowed that much discrimination?

Mr. BIRD. Yes, sir; because he has a tank car. In recent times the railroad companies are beginning to own their own tank cars because oil has become an article of fuel. The use of this oil is a matter of evolution; the use is increasing, and cars for transportation of that oil must be constructed to keep up with that demand.

Senator CULLOM. They pay that three-fourths of a cent for loading and unloading?

Mr. BIRD. Yes, sir.

Senator FORAKER. They load their own cars, I suppose?

Mr. BIRD. Yes, sir; and unload them.

The CHAIRMAN. Does the Gould System own the stock in the A. R. T. Company?

Mr. BIRD. The Missouri Pacific, the Wabash, and the Iron Mountain roads are the exclusive stockholders of the company. It is their own property. There is not a single individual with a dollar's worth of interest in that company.

The CHAIRMAN. Does it make a good return on its capital?

Mr. BIRD. We have started out in such a small way that it is hard to tell. The Missouri Pacific, the Wabash, and the Iron Mountain were separate entities at that time. We found that we had not cars enough, but we got together and found that by joining hands so as to provide a sufficient number of cars for a certain locality where they might be needed at one season of the year, then there could be a sufficient number of cars for another locality at another season of the year, and in that way there would be a sufficient number of cars for use all the time. When there is use for these cars in Texas they are not wanted in Nebraska. When they are wanted in Nebraska they are not wanted in Texas. In that way we have a sufficient number of cars for all three of the companies. That is the basis of that company. We have been buying new cars. The old cars were worn out and have been put in the scrap heap. We bought a thousand new cars last year at about $1,100 apiece. We have been turning our earnings into new equipment, but we shall have to buy thousands more, because the business requiring refrigeration is rapidly increasing and enables the company to get a kind of traffic which they could not get without those cars.

The CHAIRMAN. It is remunerative, I suppose.

Mr. BIRD. I doubt very much if there is any real profit in the refrigeration charge, and that is all the source of income they have except mileage.

The CHAIRMAN. Do they not pay 1 cent on some routes?

Mr. BIRD. They pay each other, and it is a matter of bookkeeping now.

The CHAIRMAN. In sending these cars to the South to get ready for business, do you send them loaded or empty?

Mr. BIRD. Only a small part is sent loaded, because they have not a sufficient number of cars to justify it; they do not load 50 cars to be sent to a little agricultural town because it would cause so much delay, and the whole number of cars would become too much diffused throughout the country.

The CHAIRMAN. You do not attempt to get freight going down?

Mr. BIRD. We take merchandise or house freight, but otherwise move them empty.

The CHAIRMAN. Are there any complaints now, so far as you know, in regard to rebates and discriminations?

Mr. BIRD. I for one believe there are no rebates paid.

The CHAIRMAN. And discriminations?

Mr. BIRD. No secret discriminations; there may be discriminations which are open and published in the tariffs, but mere preferential rates are not, to the best of my knowledge and belief.

The CHAIRMAN. Do you hear or do you know of excessive rates or unreasonable rates anywhere?

Mr. BIRD. There is about 15,000 to 16,000 miles of road under my traffic supervision, but I do not know of a single case where the rate is held to be unreasonable per se.

The CHAIRMAN. By your shippers?

Mr. BIRD. By our shippers; but there are a number of cases in which they hold that a given rate is unfair because the other rate is so entirely different. There are not many cases of that kind. The only case I know of where our rates are held to be unreasonable per se is by the Texas Live Stock Association.

The CHAIRMAN. Which you have explained.

Mr. BIRD. Which I have undertaken to explain.

The CHAIRMAN. How many miles from the basing point, or the initial point, does the group rate extend in the first instance?

Mr. BIRD. That varies, Mr. Chairman; there are hardly two cases alike. It is all according to the circumstances and conditions. For instance, the rate on lumber from Arkansas to Omaha is 23 cents.

The CHAIRMAN. That is a group rate?

Mr. BIRD. That is a group rate, and it goes to Omaha at Omaha rates.

The CHAIRMAN. How much of the country does that cover?

Mr. BIRD. The whole State of Arkansas; every point on the Iron Mountain.

The CHAIRMAN. And the Cotton Belt?

Mr. BIRD. I do not know about the Cotton Belt. I am not an officer of that company. I believe those rates are all the same; there may be a slight variation.

The CHAIRMAN. Are the distances long or short?

Mr. BIRD. Just the same as the Northern Pacific covers Oregon and Washington; all west of the Cascade Range is one rate. The price of stumpage and cost of manufacture and labor are substantially the same. There is only one thing more that compels that condition. It is not the choice of the railroads that there should be a blanket rate in Arkansas, but the difference in rates involves the whole State in large part, so that if you wanted to group the common-carrier lines you could not do it.

The CHAIRMAN. It is the business conditions and natural and artificial advantages (competing waterways being the largest factor) that determine what rates shall be, and not the wish or desire of the railroad company or the traffic managers?

Mr. BIRD. Certainly, that is the case.

The CHAIRMAN. Those are the elements that enter into the problem.

Mr. BIRD. The grain rate from Chicago to New York is the domi-ant factor. The all-rail route on sugar from New Orleans to St. ouis is 15 cents per hundred. It ought to be 20 or 22.

The CHAIRMAN. In making that rate you are governed by water?

Mr. BIRD. The water lines, whenever we gave them a chance, made hat rate in cargo lots—about 12½ cents—and whenever the simple 'ater rate gets higher than about 12½ cents, then comes the barge line nd takes the business at a lower rate. That has a controlling in-uence in making rates from New Orleans to Wichita and all that istrict. It makes the rate to Chicago in the same way.

The CHAIRMAN. In determining a rate, would a commission sitting t Washington be as well advised as the traffic managers and those fficials on the ground?

Mr. BIRD. There is an old saying, and pretty well authenticated, hat "in a multitude of counselors there is safety." I do not be-ieve that a small commission could cover this country so well as it is overed. There are thousands of fairly able traffic managers in this ountry, along with their staff officers, who are engaged directly in the tudy of this subject, and the aggregate number of those men is very ırge. How can the Commission give the time? It is said that the eople complain now that there is great delay in getting a decision rom the Commission. It is presumed that the reason is, in large art, because the Commission has not the time to hear the testimony nd come to a decision.

The CHAIRMAN. In order to make a reasonable rate they would ave to know all the conditions of the case?

Mr. BIRD. Yes, sir.

The CHAIRMAN. They would have to know all the conditions and actors entering in, and that would take a long time before a com-ıission, you think, do you?

Mr. BIRD. Yes, sir; most undoubtedly. May I answer further?

The CHAIRMAN. Yes; go ahead.

Mr. BIRD. In dealing with questions which come before me, and 'hich involve a change of rate, I never dare to attempt to determine efinitely that this rate or that rate shall be made until we have the raffic managers of our lines in session so that I may have the bene-ıt of what each one knows about the effect of this rate or that rate. 3y comparison with the amount of responsibility that would be de-olved upon the Interstate Commerce Commission that is a small ıatter, but I do not know of any traffic director who does not pro-eed on that line, and very often he also calls in the shipper. We ften have conferences, and such conferences are as numerous and requent as any other part of their duties. Everything must be 'eighed and the facts brought together, and to find out whether a ate is reasonable or not it must be tested in some other district to ee the result.

The CHAIRMAN. To go back to the Wichita case: You say the Com-ıission gave 8 cents against Wichita. That was the lumber rate?

Mr. BIRD. No; that was on sugar.

The CHAIRMAN. The differential was 100 per cent greater than he lumber rate?

Mr. BIRD. The lumber rate complained of in Mr. Bacon's paper 'as 4 cents. It is 23 cents from Arkansas and Texas to Kansas City, nd 27 cents to Wichita.

The CHAIRMAN. How did the Commission reach that conclusion? What did they take into consideration, if you are advised? Did they render any opinion that enabled you to find out?

Mr. BIRD. I want to answer that question without any possibility of reflection upon the Commission.

The CHAIRMAN. We do not want that.

Mr. BIRD. My conviction is that they settled that question just as I would have settled it—I would have guessed at it.

The CHAIRMAN. But you think they would be better guessers if they knew the conditions?

Mr. BIRD. I would not say that. If they know all the facts their judgment may be better than mine. But I want to make this point: That in the same issue, practically, the differential cited by the Commission on sugar was twice as great as the differential on lumber, which is complained of.

The CHAIRMAN. Yes. Now, Mr. Bird, what is the notice—I did not gather that—required to change the published tariff rate, a rate that is hung up?

Mr. BIRD. It takes ten days to advance and three days to reduce such a rate. In other words, we have to get the notice in at Washington ten days, which means in St. Louis and Chicago twelve days' notice of advances and five days' notice of reductions.

The CHAIRMAN. And under the law you can not depart from the rates unless you give those notices?

Mr. BIRD. Unless the tariff is published and properly dated and filed according to those rules.

The CHAIRMAN. Yes; according to those rules. Now, if you wanted to answer a customer or shipper on any of your lines immediately, at competitive points, where another road is competing, or where there is competition by waterway—if you had to give an answer immediately and name a freight rate, different from your published tariff, you could not do it without this notice?

Mr. BIRD. I could tell him that on the expiration of the third day——

The CHAIRMAN. Yes; but if you had to act the next day, and the shipment had to begin?

Mr. BIRD. Oh, well, I could not do it; I could not do it.

The CHAIRMAN. Then if you had an opportunity to ship, say, 500 or 2,000 cars of freight one way, and an opportunity to get a return load for your empties after reaching destination, you could make a lower rate, and would do it, than if the cars came back empty?

Mr. BIRD. Certainly, and with profit.

The CHAIRMAN. But if you had to give an answer at once you could not do it, and you would have to lose the business?

Mr. BIRD. Yes, sir.

The CHAIRMAN. And the Commission could not meet that case any more than you could?

Mr. BIRD. No, sir.

The CHAIRMAN. This is the existing law, just now, as it stands, is it not?

Mr. BIRD. That is the law.

Senator CULLOM. Do you want that law repealed?

Mr. BIRD. No, sir.

The CHAIRMAN. Are not railway companies, in their own interest,

compelled to help build up and favor localities in their own territory and upon their own lines?

Mr. BIRD. There is nothing so profitable to a railway carrier as local business.

The CHAIRMAN. And prosperity——

Mr. BIRD. And prosperity of the country, which are analogous terms.

The CHAIRMAN. And railway companies and localities are mutually interested, therefore, in helping each other?

Mr. BIRD. Yes, sir.

The CHAIRMAN. And this fact brings on a conflict between the localities on one line or system of railroad with the localities on another?

Mr. BIRD. Yes, sir.

The CHAIRMAN. And there is where the real conflict is as to this question of discrimination?

Mr. BIRD. That is the real competition which the interstate-commerce act sought so carefully to preserve.

The CHAIRMAN. They wanted to preserve that?

Mr. BIRD. Yes, sir; that was the keynote of the Cullom Act and of the Sherman antitrust act.

The CHAIRMAN. You say that at present the railroads adjust these differences between localities on their respective lines on a basis of business conditions and competition, water competition, etc. Could a commission sitting at Washington adjust the differences and fix these rates as well as the railroads?

Mr. BIRD. I do not believe it possible; and my opinion is founded upon this theory, that the traffic is so large in volume, the area of country with which they must deal is so vast that they could not name each specific rate, but the only way in which they could control the matter and fix the basis would be to prescribe a principle upon which all tariffs should be made. And if you will permit me to say so, in respect to that matter, the interstate-commerce act prohibits a comparatively unreasonable rate; but it provides no standard of measurement as to what is reasonable or unreasonable. If we can find out what the law means, we must do it; but we do it at our peril.

In looking about for the seventeen years I have been giving this matter patient thought and study, I have reached this conclusion: That the only way in which we could fully protect ourselves against complaints of discrimination between communities would be to find a rule, if we could, by the application of which we would be invulnerable against complaints. If I could find a method under which no complaint could lie against me, it might be assumed that that is what the law required. Now, I have studied the matter for eighteen years, and the only standard, the only basis or principle which I think would thus make our lines absolutely defensible is the distance tariff, because under it you charge a man for a hundred miles in this direction the same that you charge that man a hundred miles there. We charge Winona and La Crosse the same rates, according to distance; we charge the same rates per mile from Des Moines into Minnesota that we do from Minnesota into southern Iowa, according to distance.

That is a leveling process. There is not a man who has studied the question who wants that process performed; and you may say what you please, from a practical standpoint of human capabilities

and possibilities and limitations, there is no power that can answer all the questions and meet all the demands which will come before this committee and before the Interstate Commerce Commission except the application of a rule like that. It is a leveling rule. It says that the price of land in this State shall be so much, and in that State it shall be so much less. It says that you must ship to this market whether you like it or not. It says to a railroad built away out into New Mexico and down through that country, "You shall not use the means you have at hand to develop your road and bring in population." It forbids all the things which are necessary to the prosperity of this new empire that lies before us; and the business of the railroads in the United States to-day is in its infancy. Now, my plea is that you shall not project with this; that you shall not try any unknown experiments with it.

The CHAIRMAN. Do you think that after the United States has finished building roads it will perhaps be practicable then to try to confer this power to regulate rates, etc.?

Mr. BIRD. Well, when the thing is finished we will all be so angelic in character that we will know no need of a law.

The CHAIRMAN. But you think that in the process of building railroads any interference, if you please, or governmental regulation would possibly operate to prevent individuals putting their fortunes into railroads if they thought that somebody else was to fix the price of transportation?

Mr. BIRD. I think I would not want to invest. I do not think any reasonable man would invest in a property the earning capacity of which is limited by somebody else.

The CHAIRMAN. And this would operate against the building up of railroads in the West?

Mr. BIRD. Anywhere.

The CHAIRMAN. Where they are not as well developed as in the Eastern and Middle States?

Mr. BIRD. I think it would discourage it.

The CHAIRMAN. You could not find the capital?

Mr. BIRD. It depends on the degree of efficiency or the degree with which these rules or laws are enforced.

The CHAIRMAN. Did you say that your lines generally observe the long and short haul clause of the original Cullom law, section 4?

Mr. BIRD. I believe we operate in 19 States and Territories and the Province of Ontario, and there is no case within my knowledge or recollection where we have failed to apply the fourth section of the interstate-commerce act.

The CHAIRMAN. That is to say, you charge——

Mr. BIRD. We do not charge any more for the shorter haul, and we do not charge any more in the aggregate for the shorter haul than we charge for the longer, if the shorter is contained wholly within the longer.

Senator CULLOM. And if the traffic flows in a particular direction.

The CHAIRMAN. The same way?

Mr. BIRD. I do not recall a single deviation from that rule in 18 or 19 States in which the properties I represent lie; and I do not know any place west of Chicago or west of the Mississippi River, excepting as to the transcontinental traffic, where the rule does not apply,

nd that exception was authorized by the Railroad Commission of he United States.

The CHAIRMAN. Now, Mr. Bird, do I understand you to say that he interior towns of Illinois have the same rate to and from New Tork that Chicago has?

Mr. BIRD. Not all the same.

The CHAIRMAN. But there is very little difference?

Mr. BIRD. There is this difference—the difference between 100 per ent and 115 or 120 per cent.

The CHAIRMAN. I understand that; but with that explanation, vith a little increase on mileage, that operates, you think, against Chicago?

Mr. BIRD. Why, as a distributing point or a concentrating point, nost certainly, most certainly; but there is no remedy.

The CHAIRMAN. What would you do, if anything, in the way of mending the present interstate-commerce law as it exists on the tatute books?

Mr. BIRD. Nothing at all, unless it was, possibly, to expedite the earings before the Interstate Commerce Commission, if it was found racticable.

Senator NEWLANDS. Would you also expedite the proceedings in he courts?

Mr. BIRD. I understand that the law as now existent has expedited he hearings in the courts; it makes them preferential cases.

The CHAIRMAN. Yes, sir. Now, would you advise taking complaints to the courts in the first instance rather than having a hearing before the Commission, in case the Commission could not settle he dispute between the railroad and the shipper?

Mr. BIRD. Oh, I most decidedly think not. I think that the Interstate Commerce Commissioners have done a great work as intermediaries.

The CHAIRMAN. Leave them that work; leave them that work of rbitration; but suppose they can not settle a dispute by arbitration. Do you think that case should go directly to the courts rather than ave them pass judgment upon it?

Mr. BIRD. Why, that is a provision of the law to-day; any man an do it if he pleases.

The CHAIRMAN. Yes; they can go directly to the courts.

Mr. BIRD. Yes.

The CHAIRMAN. But they do hear these cases and take a long time o investigate and collect testimony and then pronounce a judgment which can be reviewed by a court. My suggestion and my question vas, Would it not be better, in case the Commission finds it can not ettle a dispute which it thinks ought to be decided and it thinks it hould go to the courts, that it should go at once, and the Commission not undertake to pronounce its judgment?

Mr. BIRD. Representing railroad interests myself, I do not know; ut I am rather inclined to favor going to the court.

The CHAIRMAN. Directly?

Mr. BIRD. But I do not know that that is the best thing for other eople. I do not know that that is the best thing.

The CHAIRMAN. I ask that in the interest of expedition, to prevent elays in the hearing and determining and settlement of matters, so o speak.

Senator CULLOM. Mr. Bird, I do not intend to ask you very many questions; you have covered the ground pretty thoroughly, I think. Notwithstanding you have some complaint against the interstate-commerce law, as it is, you would prefer to let it alone?

Mr. BIRD. I beg your pardon; I know of no complaint against the interstate-commerce law by the railroads.

Senator CULLOM. You criticised some provisions of it as to time, and all that sort of thing; and I am just calling your attention to it for the purpose of inquiring again whether there are any provisions of it that you think ought to be amended.

Mr. BIRD. From a railroad standpoint, Senator, I do not know that I could suggest any amendment in that interest. From a citizen's standpoint, from the view of the shipper and the producer, I said to-day, and I repeat it, that if possible it would be expedient and in the interest of the people to make some provision by which the hearing before the commissioners could be somewhat expedited.

Senator CULLOM. Yes.

Mr. BIRD. Perhaps through the addition of a number of commissioners, so as to divide up the territory and get right at the meat of the thing.

Senator CULLOM. But you do not want the Commission to have any more power than it has now, whether it be increased in number or not?

Mr. BIRD. I do not want it to have any more power—any power to make a rate specifically.

Senator CULLOM. The Commission now has the power——

Mr. BIRD. To condemn.

Senator CULLOM (continuing). On complaint, to go to the place and examine the question involved, and consider whether the rate is unreasonable or not under the circumstances—whether the complaint is the result of an unreasonable rate per se, as you say, or because some other rate to some other place in that region is lower. They have a right to examine it and determine whether it is an unreasonable rate under all the circumstances; and if they determine that it is not, that is as far as they can go under the present law. In case they say it is an unreasonable rate, the railroad can either obey it, or——

Mr. BIRD. Take the consequences.

Senator CULLOM (continuing). Take it to the courts; and that you want the privilege of doing hereafter under any law that may be passed. In other words, in your judgment, the main question before this country now is whether the Commission shall be given the absolute power to change a rate, to declare one rate too high, if you please, and another rate that they may agree upon as the reasonable rate, and enforce it, without going to the courts at all. That you do not believe in?

Mr. BIRD. No, sir. I am perfectly satisfied to give the Commission or let the Commission retain the power to declare that a given rate is unreasonable and to order the road to discontinue that unreasonable rate. But there are many reasons why they should not have the power to fix the substituted rate. They are practical reasons that touch every shipper in the country.

Senator CULLOM. You have stated that on your roads the long and *short haul* provision of the law as it stands has been observed regu-

larly and invariably by you. Now, we have had a good many witnesses before us, but I believe you are the first one who has said that; though I do not know whether anybody else was ever asked the question. That is to say, you do not in any case——

Mr. BIRD. Except the one.

Senator CULLOM (continuing). Charge a greater rate for a shorter than a longer haul on the same road, going in the same direction? That is, as I understand you, your statement.

Mr. BIRD. That is my statement; and I go further and say that I do not know any railroads west of Chicago, west of the Mississippi River, where the same rule does not also prevail, excepting the one instance, you know, that I have cited—the transcontinental rates.

Senator CULLOM. I had rather supposed that they violated the law on the long and short haul question.

Mr. BIRD. I believe that to be the case north of the Ohio River and east of the Mississippi River, clear to the Atlantic coast, and including New England.

Senator CULLOM. That they observe the long and short haul clause?

Mr. BIRD. Yes, sir.

Senator CULLOM. Except on transcontinental business?

Mr. BIRD. Yes, sir.

Senator CULLOM. On transcontinental business do you believe, from your knowledge of shipping, the cost, etc., and the general rules governing it, that a railroad would have a right to charge as much or more for shipping from New York to Salt Lake as it would charge for shipping from New York to San Francisco on the same line?

Mr. BIRD. I do not know, sir, that I would carry it as far east as Salt Lake. I am not familiar with the smaller details of that business; but I certainly believe most firmly that as to interior points the rates, say, from Chicago or New York may well be lower to San Francisco than to Nevada, provided the rate on all-rail shipments from the Atlantic to the Pacific is not lower than the rate which already prevails by natural means of transportation, such as water. If the carrier in disregarding the long and short haul conditions does not create a new condition at the competitive point, or any new condition, he has a right to meet those conditions and put himself somewhat in the position of the water carrier. But if he makes a rate from New York to San Francisco lower than is made by the water lines, time and service considered, then he ought not to make a higher rate to the intermediate point, by the measure of difference between what the water rate actually is and the rate which he makes.

Senator CULLOM. Take the water rate as it actually is, for example.

Mr. BIRD. Suppose it costs a man 50 cents a hundred pounds to ship iron from New York or Pittsburg to San Francisco by water, and the tariff to some station in Nevada is a dollar, and the dollar rate is in and of itself a reasonable or a low rate. I say that it may well be that the transcontinental road may make a rate of 60 or 65 cents or 75 cents through to San Francisco, and charge the man in Nevada in addition to that a reasonable sum for bringing it back to his State, just as he would have paid it if he had shipped it by water and then shipped it to the interior by rail. If the railroad carrier

does not create a new condition and make rates which are lower than would otherwise have been made by natural channels, it does not injure anyone.

Senator CULLOM. Suppose that those rates made by water, by the natural channels, are so low that a railroad can not haul the stuff for what it costs them to do it. Would the railroad have a right to carry it for any sum less than the cost of transportation?

Mr. BIRD. I am a firm believer in the doctrine announced by Chairman Cooley in the early days of the Commission, that a railroad company is at liberty to make a very low rate to meet competition, provided that rate is such as to leave it even a small fraction to contribute to the general fund of expenses—that it is not only its privilege, but its duty to make everything contribute to the railroad system that it can; but the moment it makes its rate less than cost, then it is or it may very likely become a tax on some other traffic. That is my doctrine; that is my personal belief.

Senator CULLOM. Yes; that is just exactly what I wanted to get at. I believe in Mr. Bird's honesty and in his good sense, both, and that has been my idea—that they had no right to carry this transcontinental freight at an actual expense to the railroad and make intermediate points pay the difference.

Mr. BIRD. The rate on sugar from New Orleans to St. Louis by water transportation is about 12½ cents, unless the rail rate is approximately as low. Now, the rail rate is not quite so low. The railroad service is worth more than the steamboat service. It delivers the goods at the yards and the sidetracks inland, which the steamboat can not do. Now, if the Illinois Central Railroad (the short line from New Orleans to St. Louis) makes a rate of 11½ cents, a cent lower than the steamboat rate, it is taxing somebody else's business, and creates a new condition which would not have existed but for the action of the Illinois Central Railroad.

Senator CULLOM. I believe I will not take up any more of your time.

Senator FORAKER. I understood you to say, in answer to Senator Cullom's questions, that on the Missouri Pacific, which is your road, there is no such thing practiced as making a higher rate for the short than for the long haul on the same line?

Mr. BIRD. I have not been on the Missouri Pacific or familiar with the details of its business for more than a comparatively short time; but, so far as I know, by inquiry and belief, there is no place where the long and short haul clause is disregarded.

Senator FORAKER. In 189 U. S. there is a report of a case, the title of which is "United States *v.* The Missouri Pacific," where a bill was brought and an injunction prayed for to restrain a higher charge to Wichita, 458 miles from St. Louis, than was made for the haul from St. Louis to Omaha of 501 miles.

Mr. BIRD. That does not come in under the description that I gave to you.

Senator FORAKER. How does it differ?

Mr. BIRD. I said where the short haul was contained wholly within the longer; and the haul from St. Louis to Omaha is not any part of the haul, or scarcely any part of the haul, from St. Louis to Wichita.

Senator FORAKER. That is true. You did not make that distinction, so far as I observed, however.

Mr. BIRD. I tried twice to make that clear.

Senator FORAKER. You may have made it.

Senator NEWLANDS. Oh, yes; he did.

Senator FORAKER. Yes; you might have done it. The two lines belong to the same company, however?

Mr. BIRD. Oh, yes, sir; yes, sir. Wichita is southwest of Kansas City, and Omaha is north.

Senator FORAKER. Now, I want to ask you this question, Mr. Bird: You were present when Governor Cummins was before the committee a few days ago, were you not?

Mr. BIRD. Yes, sir.

Senator FORAKER. Do you remember a colloquy that ensued between him and Senator Dolliver about the relative rates from Chicago to Des Moines and Fort Dodge, the statement being that the rate from Chicago to Des Moines was 60 cents on the first classification, and to Fort Dodge 72 cents?

Mr. BIRD. Yes, sir.

Senator FORAKER. The distance and the haul being about the same in every respect?

Mr. BIRD. Not on the same road; the haul to Des Moines on one road.

Senator FORAKER. I know; but I am asking you now about a different matter.

Mr. BIRD. Yes, sir.

Senator FORAKER. And it was thought by both those gentlemen that there was a discrimination against Fort Dodge in favor of Des Moines. I want to know what your opinion is as to how we should remedy that; or, rather, to be more explicit, could we remedy that by fixing a maximum rate, having the Government fix it through Congress or a duly empowered commission?

Mr. BIRD. I do not think the simple fixing of a maximum rate would remedy that matter, unless you repealed the long and short haul clause, perhaps.

Senator FORAKER. Would not the fixing of a maximum rate be useless to remedy that wrong unless you could also fix a minimum rate? For instance, if you fixed the maximum rate to Fort Dodge at 60 cents, assuming that the hauls were equally long and equally valuable in point of service, could not the same discrimination be practiced unless a minimum rate was fixed on the haul to Des Moines by simply lowering the rate to Des Moines?

Mr. BIRD. The fixing of a maximum rate could in no manner whatever settle any dispute arising under this relative discrimination proposition.

Senator FORAKER. That is the point upon which I wanted to get the benefit of your opinion. One of the most serious complaints made here is as to discrimination between localities growing out of relative rates.

Mr. BIRD. I will refer you to the Illinois tariff—I want to explain this, Senator, if you please. The Illinois tariff is a maximum tariff—at least I hold it to be both maximum and minimum—but it is a maximum tariff, and so regarded; and yet, the complaints in Illinois are very frequent of these late days, for the reason which I

explained. So that the maximum rate does not prevent what are called local discriminations.

Senator FORAKER. Would there be any way to prevent the continuance of that discrimination, unless, in addition to fixing a maximum rate by which you could bring down the higher charge, the Commission had power also to fix a minimum rate to prevent the reducing of the lower charge?

Mr. BIRD. I do not believe that even that would accomplish the purpose.

Senator FORAKER. Certainly it could not be accomplished without it, could it? If so, I simply want to get the information.

Mr. BIRD. I tried to make it plain that my opinion in respect to that question was this: That the only measure by which these discriminations or complaints of discriminations between localities can be absolutely disposed of is by the application of a distance tariff.

Senator FORAKER. I only wanted to get a statement from you directly responsive to what was in my mind as to the effect of fixing a maximum rate. We have been advised by the Attorney-General that Congress has the power to fix a maximum rate—a proposition that nobody has ever disputed, so far as I know.

Mr. BIRD. But it is not to be supposed that he would fix a maximum rate for one State or one part of the country and another one for another, and so on; and it is the variation between the standard rates of the various States that creates half of these conditions.

Senator FORAKER. Well, we have been advised that we can fix a maximum rate if we want to; we are all agreed upon that. I now want to test the value of the policy of fixing maximum rates; I want to find out whether there is any benefit to result from it.

Mr. BIRD. I do not think it would do away with these complaints of discriminations between localities.

Senator FORAKER. Would it be possible, unless they could also fix the minimum rate?

Mr. BIRD. You can not regulate a differential unless you have power over both the high rate and the low rate, to prevent the low rate from coming down or to compel the high rate to come down.

Senator FORAKER. For instance, if the haul of wheat from the wheat-growing region to the port of New Orleans can be made at, say, 14 cents a hundred—I believe somebody stated that it was made at about that—you can not protect against that as to the New York haul unless you can fix both maximum and minimum rates?

Mr. BIRD. That is correct, sir.

Senator FORAKER. Because they can always preserve the same differential by lowering the one to correspond to the lowering in the other?

Mr. BIRD. That is certainly so.

Senator CULLOM. Did they ever fix two rates, one a minimum and the other a maximum; or do they make a maximum rate the reasonable rate?

Mr. BIRD. They make a single rate or a single scale of rates for certain distances, and that is called either the maximum rate or it is called a reasonable scale of rates. But they never make two tariffs and say that you can charge that high and you can go that low. I have never known such a tariff.

Senator FORAKER. No legislative or governmental body has ever

ıttempted to fix a minimum rate, so far as I know, for very good 'easons.

Now, there are some other questions I would like to ask, but I have ›nly one minute left, and I wish to ask you whether or not you have 'ead in the Washington Post of to-day an account of the proceed-ngs had yesterday before the Interstate Commerce Commission in Chicago, where an examination was held with respect to the use of ›rivate cars?

Mr. BIRD. I have not read that, sir.

Senator FORAKER. It was stated in testimony given there yesterday hat on the Northern Pacific Railroad the cost of cars averaged from 51.10 to $1.75 a car, while the average charge for the various icings luring a trip from the West to St. Paul was $25 a car. Would you hink, from your experience, that that was a reasonable charge for cing?

Mr. BIRD. Twenty-five dollars a car from St. Paul to where?

Senator FORAKER. From the West, it says, to St. Paul. I will as-ıume that it means from Seattle; that would be as far West as you ›ould go, I suppose.

Mr. BIRD. I do not know; I could not tell you.

Senator FORAKER. That would seem to be a pretty high charge, vould it not?

Mr. BIRD. Well, it is eight or ten days' travel, is it not?

Senator FORAKER. I am only trying to get your idea about it.

Mr. BIRD. I should think that the refrigeration at that rate per liem, assuming that it takes approximately ten days—I do not know hat I am right, it may be eight—but divide eight into twenty-five ınd you get $3 a day. I think $3 a day for refrigeration on wheels—›n an express train—is pretty cheap.

Senator FORAKER. That may be. Then this witness further testi-ied that Armour & Co.'s charge, when their cars were used was $33 'or icing, $10 of which went to Armour & Co.

Mr. BIRD. It all went to Armour & Co., I guess.

Senator FORAKER. In addition to the rental charge made by Ar-nour & Co.

Mr. BIRD. The rental charge was the mileage, I take it for granted. They have only the two sources of income—one being the mileage ›aid by the railroad over which they run their car, and the other the ımount they collect from the shipper for the refrigeration of the ›roperty. And if you should take a carload of perishable goods—fruit, for instance—and put it in an ordinary cold-storage house in Chicago, I think you would find that three or four dollars a day was ı small charge. Now, if you put that same service on wheels and ıaul it across the continent, it seems to me that it is worth more noney than it would be in a cold-storage house.

Senator FORAKER. This witness, or at least one of the witnesses, ılso testified that they were still indulging in the practice of grant-ng rebates on these charges.

Mr. BIRD. Well, that is another matter. The refrigerator company nay do it; I do not know.

Senator FORAKER. Mentioning a number of names of shippers to whom they allowed rebates, ranging from 50 per cent up to a higher igure.

Mr. BIRD. On the refrigeration charge?

Senator FORAKER. On the refrigeration charge; yes.

Mr. BIRD. That may be so; I do not know.

Senator FORAKER. If all that be true, it would simply emphasize your opinion that these private car lines ought to be put under the provisions of the interstate-commerce law, I suppose?

Mr. BIRD. I have expressed the opinion that they were under the provisions of that law.

Senator FORAKER. I know you have; but they do not seem to regard themselves as under it, from the way they are proceeding, if this is truthful testimony.

Mr. BIRD. I do not know whether the law presupposes that the Commission can fix the price of cold storage, either in warehouses or on wheels; I do not know.

Senator FORAKER. That is all, I believe.

Senator CLAPP. Mr. Bird, during the last day or two we have had a number of shippers here who have told about the difficulties that would arise if the law were amended. You understand that to-day if a man ships a carload of freight over your road, and he thinks that your charge is too high, he can refuse to pay, and you can go into court and sue him, and in that case it would be determined what he ought to pay, do you not?

Mr. BIRD. If he replevined the goods and gave bond he could let us go to court.

Senator CLAPP. Yes; but in the end the court would determine what he had to pay you?

Mr. BIRD. I am not versed in the law, but that is my understanding of what would occur.

Senator CLAPP. Yes, sir. From what has transpired here in the last day or two, you probably understand also that if it is claimed that one of two rates between two given points is a discrimination, that question may be taken into court, and the court will decide whether or not that is a discrimination?

Mr. BIRD. That would depend on the circumstances.

Senator CLAPP. I am not asking you what the court decides, Mr. Bird.

Mr. BIRD. Oh, no; I beg your pardon, Mr. Senator; I want to explain. The St. Paul road runs from Chicago to Kansas City.

Senator CLAPP. Yes.

Mr. BIRD. The Missouri Pacific from St. Louis to Kansas City, and the Chicago man says: "My rate is too high as compared with the Missouri Pacific rate from St. Louis." That would be the issue, and that is a little indication of many questions that would come up. The action would lie against the Missouri Pacific for having its rate too low, or against the St. Paul for having it too high.

Senator CLAPP. In other words, if it is claimed that one of two rates is a discrimination against a given point, that question can be taken into court under the law as it is now?

Mr. BIRD. Most certainly it can.

Senator CLAPP. Yes. Then we have provided, if the individual himself contests the case, or if a community contends that a rate is discriminatory, that those cases can be taken to court. Now, as you understand the interstate-commerce law, if it is claimed that a given rate is unreasonably high, the Commission upon investigation can condemn that rate?

Mr. BIRD. Yes, sir.

Senator CLAPP. And the railroad company must then either abandon that rate, or, refusing to obey the order, the matter is taken into court; and if the court sustains the order of the Commission condemning the rate, then the carrier must abandon the rate?

Mr. BIRD. Yes, sir.

Senator CLAPP. In addition to that, as the law is to-day the Commission has no power to say with the same legal effect that it condemns a rate what rate shall take its place. But I think the testimony here shows that wherever the railroad has accepted the decision of the Commission condemning a rate, or where in the end the court has sustained the Commission in condemning a rate, in the main and since 1897 with only two exceptions the carrier has put into effect the substituted rate as suggested by the Commission.

Mr. BIRD. Substantially so.

Senator CLAPP. Now, then, taking a given rate and subjecting it to the operation of the existing law, suppose that the carrier accepts the order of the Commission, or, not being satisfied with the order of the Commission, disobeys the order, and the matter is taken into court, and the court sustains the Commission, and then the carrier makes the proposed reduction. Is it not true that all the conditions, primarily the effect upon correlated rates, the effect upon the revenue of the company, and the difficulty that surrounds adjusting rates, apply with equal force whether that rate is put down to a given point by the existing process or is placed at that given point by a commission whose suggestion as to the new rate simply has the same legal effect under all the other conditions of the law as they now exist that its order as to abandoning a rate has?

Mr. BIRD. I can not see any difference in the effect if the rate is reduced; I can not see anyway why the reduction by one means should not have the same effect as the reduction by the other. That is not the objection.

Senator CLAPP. And all of the complications that have been mentioned would surround it, would they not?

Mr. BIRD. Yes, sir; but that does not fill the measure. It is not the measure of our objection to the rate-making power going into the hands of the Commission.

Senator CLAPP. Well, you have the privilege of qualifying that answer.

Mr. BIRD. There are other very serious reasons why we object to transferring this power to make the rate.

Senator CLAPP. State them, then.

Mr. BIRD. Nearly 90 per cent, if not more, of the complaints or imagined grievances between the communities and the railroads that are taken up by the Commission are settled without formal inquiry or investigation.

Senator CLAPP. Certainly.

Mr. BIRD. But the very minute the Commission is given power to make rates, and a community imagines that it can go to the Commission and make more or less of an ex parte statement in a case which is a forlorn hope, but where it has nothing to lose and everything to gain, that class of investigation or complaint will multiply immensely; and just as soon as the power is vested in the Commission,

just that soon there will be a bar between the traffic managers of this country and the shipper who wants to ship his freight. The shipper will say, "I must have this rate;" but the traffic manager will reply, "If I make you that rate now this Commission has the power to make it to everyone at any time, and I am setting a precedent, an example, by which they will measure every case in which I appear before them. I myself will have established the precedent, and they will say that is an evidence of a reasonable rate."

Practically, I do not believe it would work out as you say. It has not worked out in the States where that very power exists. We judge our case in Federal legislation by what we have learned from experience in the States.

Senator CLAPP. Under the law as it is now, Mr. Bird, the shipper knows that if he can not agree with you he can go to the Commission, and the Commission has the legal power to condemn that rate and to suggest a substitute rate, which, in view of the continued legal power of the Commission to challenge the rate which you substitute, practically leads to the substitution of the rate suggested by the Commission. Now, do you think—and that is what we want to get right down to here—that merely giving to the suggestion of that Commission as to the substituted rate the same legal effect, no more and no less, that is now given to its original order condemning the old rate, would lead to any serious complications in the transportation business of this country? If so, I wish to know specifically where the difference between the two lies.

Mr. BIRD. I would not give any commission the right to essentially modify the law as it exists to-day. The moment you give them the right that is included in this bill you give them the right to overturn the principles of the interstate-commerce act. They can, in discussion of a subject, strike out absolutely any reference to "similar circumstances and conditions." They can do a hundred things, a thousand things. The upshot of it is that if they had the power that is supposed to be given them in that bill they could put an absolutely different construction upon the bill; they could become the lawmakers.

Senator CLAPP. If you will bear patiently with me for one moment, you will recall that, instead of speaking of that bill or any bill, I am speaking of taking the law as it is now, with all its limitations, its long and short haul clause, qualified by the condition that it shall not apply where the circumstances are similar—in short, the right as it exists now in the railroad to initiate its rates notwithstanding they have been changed. I am simply asking what difference it would make if we should take the suggestion of the Commission as it is now, giving it the same legal force, no more and no less, leaving it still subject to review by the courts, still subject to all the legal conditions as interpreted by the courts, and simply give to that suggestion of the Commission as to the modified rate the same legal effect that to-day, in the light of law and its interpretation, is given to the order condemning a given rate. It does seem to me, in the logical sequence, that there can not be any great difference; and if you think there is, that is the point upon which we desire information. If you think there is, we certainly want you to bring it out.

Mr. BIRD. I believe there is a great difference.

Senator CLAPP. That is what we want to know.

Mr. BIRD. I am not in favor of the disregard of the law as it stands to-day with respect to the long and short haul clause. That is an essential feature of the law to-day.

Senator CLAPP. Yes.

Mr. BIRD. It contains the expression that "under similar circumstances and conditions" you shall not do so and so.

Senator CLAPP. Yes.

Mr. BIRD. Now, a case comes up before this Commission——

Senator CLAPP. To-day?

Mr. BIRD. A new case, if the law is amended.

Senator CLAPP. No; first take it before we amend it.

Mr. BIRD. As it comes up to-day, the defendant railroads say, "The circumstances and conditions are substantially different."

Senator CLAPP. Yes.

Mr. BIRD. And the Commission may not be at liberty to condemn the action which has been complained of. That is as it is to-day.

Senator CLAPP. Yes.

Mr. BIRD. The court says that certain things are to be considered, as differing circumstances and conditions, substantially different.

Senator CLAPP. Yes.

Mr. BIRD. Now, take the Townsend bill——

Senator CLAPP. But, Mr. Bird, I am not talking about the Esch-Townsend bill.

Mr. BIRD. Well, the power to make rates is what I am talking about.

Senator CLAPP. I am not talking about that, in that sense. I am talking about taking the law as it exists to-day, and simply adding to this law, with all its limitations, as it has been construed by the courts—the courts have gone to say that the mere fact of competition is a dissimilar case on the long and short haul clause.

Mr. BIRD. Yes.

Senator CLAPP. I refer to taking this law as it stands to-day, and simply adding to it the one provision that will give to the suggestion of the Commission as to the modified rate the same legal force which to-day is given to its order condemning the excessive rate.

Mr. BIRD. I understand your view now.

Senator CLAPP. Yes.

Mr. BIRD. And my objection remains just the same; because with that modification, the single modification that you suggest, let us assume that a case comes up down here in the Southern States.

Senator CLAPP. Yes.

Mr. BIRD. I am not trying to protect those railroads down there; they can do it better than I can; but it affords an illustration. The Commission will hear everything that is to be said, and they will make up their minds. They are opposed to the rules that exist down there now; very much opposed. They think they are unfair and that the long and short haul rule should be applied. They are firmly committed to that. I do not raise the question of the wisdom or unwisdom of that view; but they try a case, and they can decide it according to their own bent and judgment. They may not be willing to give weight to the alleged differing circumstances and conditions, and may bring in a verdict—a rate—that is in line with their views. Now, just to that extent they can subvert such a law as you have described; they can take away from the railroad companies that

right, because you can not enter into their minds and see why and how they announce that rate to be fair.

Senator CLAPP. Can you enter into their minds to-day to see how they announce a given rate unfair and condemn it?

Mr. BIRD. No; but I am only presuming that the power that you give to the Commission may be exercised.

Senator CLAPP. How is that?

Mr. BIRD. Whatever additional power you may give to that Commission will probably be exercised, and in the exercise of that power they may take away from the railroads the privileges or the rights which they now enjoy. Now, I am not particular about that case.

Senator CLAPP. Is there a single reduction that could be made under that power, supposing that the court in the last analysis would sustain the action of the Commission as to that rate, that they can not now force down under the existing law, supposing that the court sustained them in this action?

Mr. BIRD. I think not, sir.

Senator CLAPP. Well, that is all there is of it.

Mr. BIRD. I mean to say, I disagree with you; I think there are cases.

Senator CLAPP. Oh, you think there are?

Mr. BIRD. Yes.

Senator CLAPP. I do not want to take too much of the time of the committee, but it seems to me that it is the logical sequence that if we reduce a rate from $1 to 80 cents by one process, and the Commission have the power now to do it—assuming that the courts will sustain them—the effect would be the same whether they did that by a direct order or not.

Mr. BIRD. Well, I think this: I think that when it comes to the issue, as the laws are construed to-day and exist to-day, the rights the railroads have under the judiciary, under the courts, may be essentially different in their result from the rights which they would have under the amended proposition as you have suggested it. We are entitled to all the rights we can get from the courts.

Senator CLAPP. Yes.

Mr. BIRD. The line of reasoning and the protection of property and all that sort of thing may have a vastly different appearance to the court than to the Commission who come in contact with these people. We want our day in court. That is not the sole reason why I object to the Commission having that power, however.

Senator CLAPP. Mr. Bird, you could not have understood my question. My question includes your day in court, as you have it now.

Mr. BIRD. Oh, I know; I know; but we do not want to go before the court with a prima facie case against us. We do not want to have to go into court and prove a negative.

Senator CLAPP. Do you not now?

Mr. BIRD. No, sir.

Senator CLAPP. If the Commission makes an order, and you disobey it, you are cited into court.

Mr. BIRD. Very well; but we may reduce our rate under the Commission's order, but not as much as they think we ought to.

Senator CLAPP. I know; but if they do not think you have reduced it enough they can attack it again.

Mr. BIRD. Certainly, that is true; but that is long litigation.

Senator CLAPP. Well, when you get down to a given point, what is bothering my mind is to see what difference it makes whether you get down to it by the condemnation of a given rate and the acceptance of that condemnation by the substitution of another rate or the declaration of the Commission putting this other rate in force.

Mr. BIRD. The chief objection which I have to a simple modification of the law in that one particular is this: That the law already provides a fairly safe and prompt remedy, and we are dealing with an enormous area of country and an enormous and prodigious traffic. There are very few complaints that justify an experiment with all this traffic. Do not legislate against anything except that which is clearly determined to be an existent evil.

Nobody has shown, nobody has tried to show, that in the present law there are defects which deprive the people of their rights. Nobody has laid before you any case in which anybody is deprived of his rights.

Senator CLAPP. That argument would go to the wisdom or unwisdom of the proposed amendment; what I am getting at is the practical effect of such an amendment on the traffic, and I would like to have that explained.

Mr. BIRD. There may be, Senator, very little difference in the theory of the one case or the other; but the point is, we do not know—we do not know what the precise result will be. Therefore do not experiment, especially in cases where the evil is not a plainly defined one, or the complaint is not set forth specifically with reasonable certainty to you. No such presentation has been made. There is no popular demand for such a law. That is the point. Why should Congress legislate? What for? Why, at the demand of the people who are affected. There is no such demand. There is no call for such legislation—no real, genuine call.

You are dealing with enormous interests. Why experiment? That is my view, and that is the view I take of the whole subject; and I think it is the sum of the whole thing.

Senator CLAPP. Have you read the evidence of these other gentlemen—Messrs. Lincoln and Tuttle?

Mr. BIRD. I have read Mr. Lincoln's testimony; I have not read Mr. Tuttle's.

Senator CLAPP. I think Mr. Lincoln conceded that the practical effect would be the same.

Mr. BIRD. Perhaps Mr. Tuttle has a better knowledge of the facts than I have. I defer to him. Perhaps Mr. Lincoln has not had the same opportunity for observation that I have. I defer to him largely. He is a subordinate officer, and a very respectable and useful gentleman, and I think he is very well informed in his own territory. I take a wider view. I have a larger view; and I think that the whole gist of my testimony is contained in the last three or four minutes' remarks. That is the basis of my objection; that is the reason of it all.

Senator CLAPP. That simply goes to the question of the policy of Congress, as to whether we will have such legislation. What I am getting at is, in all this controversy, What is the real issue, and what would be the practical effect of this amendment?

Mr. BIRD. The practical effect of this amendment, so far as it touches my line of business, is as I have stated—to substitute one

measure for another. There is a means of correcting these evils alleged to exist, though I do not know where they are. There is a means now of correcting those evils. Here is another means that has been suggested, and we are to judge between the two. I do not know which is the best; and with due deference to this committee of Senators, I do not believe that any of you gentlemen know what is best. It is a matter of guesswork.

Do not let us guess any more than we must about this prodigious interest, the prodigious traffic of this country, with its revenues. Give us a chance to breathe; give us a chance to determine whether there is an evil, or whether it is a straw man put up here for political purposes. I do not know, but I believe the power behind these complaints is from phantom organizations and so-called "commercial" bodies. The Senator from Ohio explained that there were some very respectable gentlemen and organizations connected with this movement. That may be true, but at the beginning it was not so. They have been led in in the hope of correcting an evil which doubtless exists—and, by the way, I believe the Interstate Commerce Commission has practically settled the very question which gave rise to the complaints from Cincinnati. Why are the railroads picked out to be the target of every schemer who wants to rake the rake-off into his own pocket? That is what we have suffered for the last seventeen years.

Now, we are respectable gentlemen—I do not speak for myself, but for all of the men engaged in this business. They are trying to do the best they can for the interests they represent and that are irrevocably connected with the interests of this great country. They are working hard. They are doing their best. They have accomplished wonders. Twenty-five years ago you would not have believed it possible to do what has been done. Now, why project with it? Why experiment with it? Is there a clearly defined case that convinces you that this experiment is necessary? I do not know of any. I do not think the honorable Senators have ever had their attention called to a single case of that kind.

That is the whole situation. Why experiment? That is my objection, or chiefly my objection. I am ashamed of myself for having taken so much of your time, gentlemen, but I am warm on this subject. I have given forty years to it. I have studied this last question seventeen years and I can not find a case of the kind I have mentioned. Why substitute one measure for another unless the measure in existence has been proved defective? That is the question I want to have answered, and I think it ought to be answered. Why substitute one measure here for one that has existed seventeen years or less—for a long time—and there is no fault found with it or no fault has been demonstrated?

There was a man once, gentlemen, a hypochondriac, who took great quantities of patent medicine—and you will see them advertised all over this broad country. Every newspaper is full of remedies for this and for that. Each one is a "sure cure." He took this and he took that and he took the other patent medicine, until he came to his deathbed. Then he realized his foolishness and that he was going to die in a few minutes, and he told his wife to put this inscription on his tombstone: "I was well; I wanted to be better; I took *medicine*, and died."

Senator NEWLANDS. Mr. Bird, you remember that Governor Cummins favored the fixing of rates according to the cost of service?

Mr. BIRD. Yes, sir.

Senator NEWLANDS. Would not that involve the fixing of trainload lots at a less price than single carload lots?

Mr. BIRD. Oh, it would, if you answer the question technically, in a literal sense. I do not think the Governor intended that application, and I do not think anyone else would. That would strike at the foundation of the entire business. It would create a source of great harm.

Senator NEWLANDS. The Interstate Commerce Commission has decided that you can not fix a lower rate, has it not?

Mr. BIRD. The unit for the small lot is a hundred pounds, and for the large lots 1 carload, and I do not think it ought to be changed.

Senator NEWLANDS. You do not think it ought to be changed. Now, Mr. Bird, I want to ask you one or two questions in regard to the present complexity of the railroads engaged in interstate commerce, the necessity of their looking after fluctuations in relation to taxation and legislation and regulation, etc. Can you make any suggestion at all that would simplify the operations of the existing system of railways, so far as they relate to interstate commerce?

Mr. BIRD. Do you mean simplify them in relation to these questions?

Senator NEWLANDS. Any system of organization or incorporation?

Mr. BIRD. Oh, no, sir; I have never had time to study that. I have been swimming in rough water, barely able to keep my nose above the water, in matters of traffic, and I have not been able to enter into the question of the future policy as to finances. It has been simply "paddle away" in my case.

Senator NEWLANDS. As I understand that you wish to get away, I will not keep you longer, Mr. Bird.

The CHAIRMAN. We thank you very much for the patience with which you have waited, Mr. Bird, and the statement you have made.

Mr. BIRD. Mr. Chairman and Senators, I am sorry that I have taken so much time. I thank you for the very patient and courteous hearing that you have given to me.

STATEMENT OF MR. C. A. JENNINGS.

The CHAIRMAN. Please state your name, occupation, and place of residence.

Mr. JENNINGS. My name is C. A. Jennings. My residence is Chicago. I am manager of the transportation department of the American Cotton Oil Company and its subsidiary companies.

Ours is an organization doing business at local and competitive points in 15 different States, in Canada, and Europe. We operate in all about 70 plants. In this country they extend from Providence, R. I., on the east, to Seguin, Tex., on the west, principally throughout the Southern States, but with locations also at Cincinnati, Chicago, and St. Louis. From this it may be seen that I speak from no standpoint of a particular locality or territory.

We crush, during a season, something in excess of 500,000 tons of cotton seed, which move largely locally. We also handle, to a large extent, the products of others, originating at points both local

and competitive. I have been engaged in handling transportation matters for twenty years, and in that time I have had little or nothing to complain of as to unfair or arbitrary treatment on the part of the railroads.

The general business has spread and increased and the roads have been very instrumental in enhancing the value of cotton seed and its products and in enlarging the contribution to the wealth of the country from this source. The rates have been gradually and materially reduced.

My experience generally has been that legitimate business ethics have been adhered to by the transportation officials in the handling of propositions in which we were interested.

With such an experience I can not conscientiously recommend a radical departure to untried methods. I believe in the elimination of discrimination in rates as reached through the medium of rebates or subterfuge. I think stability in rates is greatly to be desired. However, they should, at the same time, be sufficiently flexible to respond promptly to changing conditions. In this busy, progressive country we may expect frequent and rapid changes. If we could regulate conditions, we could nearer approach desired stability.

There should reasonably be Government provision against unfair discrimination.

Along the line that our various States provide against the practice of usury, some Federal provision might reasonably be made against the abuse of power or extortion in rates on the part of railroads. It is quite likely that this Government machinery is already provided in the various district or circuit courts. What might be considered usury in Massachusetts might not rightfully be so called in Texas. The conditions may naturally be quite different, and this difference in condition should be carefully weighed and considered, and the rate extortion or abuse should be absolutely determined and proven before a remedial ruling is applied.

Notwithstanding the public nature of transportation as a factor in the nation's business, it still represents a preponderating private investment, and as such should be generally under private management, accountable to the General Government for proven transgressions on the rights of others.

Senator CULLOM. You have been in business twenty-one years, I believe you said?

Mr. JENNINGS. Something in excess of twenty years; yes, sir.

Senator CULLOM. Did you ever receive rebates or any special favors?

Mr. JENNINGS. Why, long ago; yes, sir.

Senator CULLOM. Not in recent years?

Mr. JENNINGS. No, sir.

Senator CULLOM. You have no advantages that other people are not getting?

Mr. JENNINGS. I do not know of any such. We have some things which may be considered as advantages which others have not. We have a very extensive business, and we have our own car-line equipment.

Senator KEAN. They own private cars.

Senator CULLOM. You have private cars, have you?

Mr. JENNINGS. We have a line of between six and seven hundred tank cars.

Senator CULLOM. You pay for the hauling of these cars on the different lines, I presume? What is the rate at which your cars are hauled?

Mr. JENNINGS. I did not quite hear you, Senator Cullom.

Senator CULLOM. I say, what is the rate you pay for hauling these cars on the different railroad lines?

Mr. JENNINGS. The established tariff rate.

Senator CULLOM. How much is that?

Mr. JENNINGS. It all depends on the point of departure and point of destination.

Senator CULLOM. Do you not pay so much a mile?

Mr. JENNINGS. Oh, no. Are you referring to the movement of the car itself, or to the movement of the car and contents?

Senator CULLOM. To the movement of the car. In the case of these private cars I always get mixed as to whether they pay the railroad or the railroad pays them. I believe the railroad pays you?

Mr. JENNINGS. We are allowed a mileage of three-quarters of a cent a mile.

Senator CULLOM. Just the same price as these private cars shipping beef and all that sort of thing?

Mr. JENNINGS. I would imagine so.

Senator CULLOM. Of course you are entitled to whatever advantages you can get by virtue of being large shippers.

Mr. JENNINGS. I can say to you though, very truthfully, that the tank-car proposition is not a profitable investment—that is, that it is not unduly so—because we are using them as a part of our general machinery, and they are not engaged to any considerable extent outside of our own work. There is an idleness of from four to sometimes six months a year in which they are practically inoperative, earning no money whatever.

Senator CULLOM. Are you having any trouble nowadays between your firm and persons who undertake to ship oil in barrels and that sort of thing?

Mr. JENNINGS. No, sir; we never have had.

Senator CULLOM. There used to be a case of a man named Rice——

Mr. JENNINGS. That was in the petroleum business.

Senator KEAN. That was in the petroleum business, in the State of Pennsylvania.

Senator CULLOM. I remember that Rice was always quarreling with the petroleum shippers in tank cars because he thought there was a discrimination against him. I did not know whether that was still going on or not.

Mr. JENNINGS. We have never considered it a discrimination or an undue advantage to possess tank cars. They are quite an expensive piece of machinery to keep up.

Senator CULLOM. You have to keep them up in order to do the business?

Mr. JENNINGS. Yes, sir.

Senator CULLOM. Do you live in Chicago?

Mr. JENNINGS. I live in Chicago; yes, sir.

The CHAIRMAN. Have you any complaint to make of excessive rates in your business, of unreasonable and excessive railroad rates?

Mr. JENNINGS. No, sir.

The CHAIRMAN. You know of none in your business?

Mr. JENNINGS. No, sir.

The CHAIRMAN. And in the country, generally, where you operate, are there complaints of excessive rates, or does there seem to be a general acquiescence in the rates as fixed by the railroads?

Mr. JENNINGS. I do not recall any case, particularly, of complaints as to rates in any direction on the movement of cotton-seed products.

Senator CULLOM. Do you consider your cars under the law, as the railroad companies and the interstate-commerce trade generally are under the law?

Mr. JENNINGS. No, sir; excepting as to safety appliances. I have never, for instance, considered that we were common carriers.

Senator CULLOM. Common carriers in the ordinary sense?

Mr. JENNINGS. No, sir.

Senator CULLOM. So that really you do not regard yourselves as subject to the interstate-commerce act and under the control of the Interstate Commerce Commission, do you?

Mr. JENNINGS. There has never been any occasion for us to consider the case in that phase and aspect. As I say, our cars are practically a part of our machinery, and they engage almost entirely, if not altogether so, in the movement of our own product from one of our plants to another or from some outside plant to one of our own.

Senator KEAN. How many factories have you?

Mr. JENNINGS. We have in the neighborhood of 70.

Senator KEAN. Seventy?

Mr. JENNINGS. Yes, sir; of different kinds. Some are crude-oil mills, some are refineries, some are fertilizer plants, and some are soap factories.

I thank you very much for permitting me to address you.

STATEMENT OF MR. ANDREW J. FRAME.

Mr. FRAME. Mr. Chairman and gentlemen, my name is Andrew J. Frame. I am president of the Waukesha National Bank, of Waukesha.

For fear my motives may be misconstrued, permit me to say right here that I do not now nor never in my life have owned a dollar of railroad stock; therefore none can charge that personal profits is the inciting cause of this article.

I believe that justice enthroned in the settlement of consummate problems involving such vast interests is of paramount value to capital and labor alike. When the fate of, say, one-seventh of the total wealth of the United States is awaiting the just verdict of our statesmen; when material injury to that one-seventh is injury to the other six-sevenths in our house of cards, how careful should our statesmen be that justice should reign and that the great prosperity of this country should not be shaken to its foundation by a false step. President Roosevelt, in his message, clearly shows his sense of justice in advocating that unjust discriminating wrongs be righted wherever found. He is not seeking to bring the righteous, but sinners, to repentance. Wholesale slaughter of vested rights is not justice. I have faith to believe that any Populistic, Socialistic cry, if it does sway the weak political vessels and demagogues who harass our progress, will not sway President Roosevelt from his moorings,

and that Congress, which is the final lawgiver, will not commit any serious blunder in the settlement of this all-important problem.

There is a popular notion that the railroads are plundering the people on a wholesale scale, and that their profits are enormous. What are the facts? Let us reason together a little.

Poor's Manual of Railroads, the reports of the Interstate Commerce Commission, and the Statistical Abstract of the United States are nonpolitical and undeniable authorities; therefore I have compiled in condensed form from them such facts as illumine with convincing force the subject under discussion. Comments will follow these tables.

TABLE No. 1.—*Railroad mileage, capital stock, and bonded debt of all steam railroads in the United States, 1883 to 1903, by five-year periods. (See Poor's Manual of Railroads, 1904, p. 16.)*

Year.	Mileage.	Capital stock.	Bonded debt.
1883	120,519	$3,675,798,383	$3,479,411,914
1888	154,444	4,392,287,224	4,585,471,533
1893	175,442	5,021,576,551	5,510,225,528
1898	184,894	5,581,522,858	5,635,363,594
1903	206,876	6,355,207,335	6,722,216,517
Average 21 years	.....	4,956,008,435	5,188,468,545

Average total stock and bonds		$10,094,476,980
Capital stock in 1883	per mile	30,500
Capital stock in 1903	do	30,719
Bonded debt in 1883	do	28,870
Bonded debt in 1903	do	32,494

Notwithstanding the vast improvements to roadbeds, millions of dollars paid for raising and lowering tracks in cities, rolling stock, depots, shops, great terminals, etc., the stock and bonds have changed but little. We must not forget that the mileage, usually referred to as being 206,876 in the United States in 1903, is single-track mileage for all roads. It does not include about 78,000 miles of second, third, and fourth tracks, sidetracks, yard tracks, and terminal tracks.

TABLE No. 2.—*Average dividends paid, bond interest, and income per mile for freight and passengers for 21 years, 1883 to 1903. (See Poor's Manual for 1904).*

Year.	Dividends, average rate.	Bond interest, average rate.	Freight rate per ton per mile.	Average rate per passenger per mile.
	Per cent.	*Per cent.*	*Cents.*	*Cents.*
1883	0.0276	0.0494	1.224	2.422
1884	.0250	.0493	1.124	2.356
1885	.02	.0497	1.057	2.199
1886	.0208	.0486	1.042	2.194
1887	.0217	.0486	1.034	2.276
1888	.0180	.0448	.977	2.246
1889	.0179	.0453	.970	2.169
1890	.0183	.0444	.927	2.174
1891	.0187	.0441	.929	2.184
1892	.0198	.0425	.941	2.168
1893	.0188	.0431	.898	2.072
1894	.0166	.0419	.864	2.025
1895	.0158	.0424	.839	2.069
1896	.0152	.0445	.821	2.032
1897	.0149	.0424	.797	2.029
1898	.0168	.0421	.758	1.994
1899	.0190	.0424	.726	2.002
1900	.0242	.0424	.746	2.031
1901	.0262	.0421	.756	2.028
1902	.0293	.0407	.764	2.012
1903	.0283	.0413	.785	2.056

Average dividends but 0.02.

First. Note that the average dividend paid in the past twenty-one years is but 2 per cent on the capital stock, which fact will doubtless upset many theories. The reduction from, say, 5 per cent interest paid on bonded debts in 1883 to 4⅛ per cent in 1903 was lost to the bondholder and gained by the patrons of the roads, because—

Second. The freight rate per ton per mile, which averaged 0.785 of a cent in 1903, was 56 per cent higher in 1883, or 1.224 cents per mile.

Third. The average rate per passenger per mile in 1903 was 2.056 cents, and that for 1883 was approximately 20 per cent higher, or 2.422 cents per mile.

TABLE NO. 8.—*Railroads placed under receiverships and sold under foreclosure, 1883 to 1903.* (*See p. 406, United States Statistical Abstract for 1903.*)

Year.	Placed under receivers.		Sold under foreclosure.	
	Miles.	Stocks and bonds outstanding.	Miles.	Stocks and bonds outstanding.
1883	1,990	$108,470,000	1,354	$47,100,000
1884	11,038	714,755,000	710	23,504,000
1885	8,386	385,460,000	3,156	278,394,000
1886	1,799	70,346,000	7,687	374,109,000
1887	1,046	90,318,000	5,478	328,181,000
1888	3,270	186,814,000	1,596	64,555,000
1889	3,803	99,664,000	2,930	137,815,000
1890	2,963	105,007,000	3,825	182,495,000
1891	2,159	84,479,000	3,223	169,069,000
1892	10,508	357,692,000	1,922	95,898,000
1893	29,340	1,781,046,000	1,613	79,924,000
1894	7,025	395,791,000	5,643	318,999,000
1895	4,089	369,075,000	12,831	761,791,000
1896	5,441	275,597,000	13,730	1,150,377,000
1897	1,537	92,909,000	6,675	517,680,000
1898	2,069	138,701,000	6,054	252,910,000
1899	1,019	52,285,000	4,294	267,534,000
1900	1,165	78,234,000	3,477	190,374,000
1901	73	1,627,000	1,139	85,808,000
1902	278	5,835,000	693	39,885,000
1903	229	18,823,000	555	15,885,000
Total	99,227	5,412,928,000	88,585	5,382,287,000

Let us analyze the foregoing marvelous statements with a judicial mind in our search for justice. Further, in drawing conclusions we must average for a long period of time, because none will deny that all history proves that periods of prosperity follow periods of adversity. One who quotes results from prosperous years and applies them as a guide in his conclusions, is an unsafe man to make laws which govern our progress. Alas! too many shallow conclusions are drawn on that basis, then trouble ensues.

QUERIES TO PROPOUND.

First. If Table 1 shows in 1903 that 6,355,000,000 of stock was outstanding, and Table 2 shows average dividends paid for twenty-one years were but 2 per cent, two-thirds, or 4,237,000,000, of stock can be wiped out and the one-third left, or 2,118,000,000, received but 6 per cent interest. The Interstate Commerce Commission reports show that about 60 per cent of the struggling railroads in the United States *paid no* dividends whatever in the past ten years. It is rare that

feeder lines of pioneer roads, which develop our country, reimburse their owners for years after building them.

Second. In Table 2, columns 3 and 4, is it not clear that the trend of freight and passenger rates has gradually declined in the past twenty-one years? If one sees fit to go further back, statistics clearly show much higher rates than in 1883.

Third. Table 3 shows that in twenty-one years 54 per cent of all the railroads in the United States were placed in the hands of receivers, and about 54 per cent of the whole were "sold under foreclosure" of mortgages. What an amazing revelation to the average citizen.

RAILROADS OWNED BY THE PEOPLE.

It is a popular idea that a few millionaires own the railroads of the United States. Out upon such a preposterous proposition! The facts are they are simply the captains of industry whose guiding genius manages these great corporations for their real owners, who are numbered by the millions and scattered from Maine to California. Railroad bonds and stocks are held by investors everywhere. Insurance companies, both fire and life, savings banks and trust companies have hundreds of millions of dollars of them, and they belong to the millions of depositors and policy holders. Many railroad bonds are held as trust funds for widows and orphans. Crush these interests and you crush the prosperity of the whole people. Crush these interests and you jeopardize the pay rolls of more than a million railroad employees.

When the honest masses, who can not be expected to have at command full knowledge on these complicated matters, are swept from their moorings by the enticing promise of relieving them from taxes or materially reducing freight charges by throwing these burdens upon the railroads, in view of the foregoing facts, not theories, is it not the duty of our statesmen to calmly ponder what stupendous results may follow any radical action in this matter?

No honest man will object to legislation righting wrongs of discrimination in freight rates, unjust rebates, special favoritism to special car lines, or other clearly defined wrongs. The railroads doubtless will welcome legislation to kill off the sandbaggers. But alas! the theorist is the only man who has a "sure cure" for all evils. The practical business man alone knows the difficulties in bringing about the millennium. Nevertheless, evolution on conservative lines, correcting palpable evils, should be welcomed by all. Revolutionary methods are generally calamitous in result.

THE PEOPLE'S INTERESTS AT STAKE.

None but a pessimistic malcontent can deny that in this country greater prosperity abounds and labor is better housed, clothed, and fed than in any other country on the globe. When we compare the cost per mile of railroads in Europe with ours, to wit:

	Per mile.
In the United States	$64,000
In all Europe	100,000
In Germany	100,000
In France	140,000
In Great Britain	267,000

When it is a well-known fact that our railroad rates, both for freight and passengers, are less than those of Europe, notwithstanding lower prices for labor there, and our systems are far superior in general comforts, every American citizen should feel a just pride. When the foregoing tables clearly show small profits to the stockholders in a risky enterprise, a constantly decreasing freight and passenger rate—except when prices of labor and material are higher in certain years—notwithstanding the cry to the contrary; when all fair-minded men must admit that capital will not venture if harassed by constant political interference and without promise of fair rewards for the risk involved; when the terrible object lesson of 54 per cent of the railroads sold under foreclosure in twenty-one years is a matter of history; when material reduction of rates will bring bankruptcy to the weaker roads and only the strong will survive, thus bringing in its train general distress; when we consider that the railroads do not run money factories, but must get their income from the people for services rendered to the people with which to pay labor, taxes, fixed charges, and a reasonable return to the owners; when we consider that only those who make money employ labor and thus multiply prosperity and that certain bankruptcy and general adversity follow any losing business, how careful should our statesmen be that no act of theirs adversely affecting such large interests should be enacted into law.

A rate commission appointed by any political body with absolute powers to fix rates not subject to revision by the courts is simply monstrous. No other interest is denied this right. When appeal to the courts, which are as far removed as possible from unstable politics, is denied vested interests, then freedom and justice will be banished and autocratic government be enthroned in their stead. In the final solution of this troublesome problem may vested rights be protected, and may broader prosperity follow a generally accepted sound solution of the railway rate question. May reason reign.

STATEMENT OF MR. WILLIAM Z. RIPLEY.

The CHAIRMAN. State your name, residence, and occupation, please.

Mr. RIPLEY. My name is William J. Ripley; I am professor of economics at Harvard University, and chairman of the department of economics. At the same time I should like to state that I appear here absolutely in my own private personal capacity in every respect. In addition I desire to state that I am the president of a small corporation, which for about fifty years has been conducting business in the city of Boston; that I am a trustee of a number of estates; and consequently that my personal and private interests are, if at all one-sided, in the direction of what might be called that of "vested interests." I make this statement merely in order that any statement as to the great issues involved may not be thought to be the result of an irresponsible position as teacher in a college. This controversy means much to me from the point of view of science, but from the point of view of business and of property it means more still. Such testimony as I shall give will be from that divided point of view.

Senator KEAN. Did you have some connection with the Industrial Commission?

Mr. RIPLEY. I should state right here that in 1900 I was the expert on railroads for the United States Industrial Commission, and in that capacity spent a number of months in traveling over the United States, especially in the South and Middle West, conferring with private individuals, with merchants, and shippers of all classes. I had many conferences with traffic managers, had charge of many of the examinations of railroad witnesses for the Industrial Commission, and in conclusion drew up the final report of that commission, of which I have a copy here, outlining the transportation problem as it seemed to exist at that time.

This report was most hastily prepared, under hurry-up orders of the Commission, and is open to such minor corrections as necessarily result from the haste of the work; but I believe it to be a thoroughly straight statement of transportation conditions in the country in 1900. There are a number of things in there which I should modify at the present time, and particularly the judgment expressed with regard to the reasonableness of the increases of freight rates since 1900. I am inclined to think that there has been proven by subsequent experience more reasonableness in those general increases than was supposed at the time this report was made. But within a very few weeks after that report was drafted the trunk lines, in response to the demand of the shippers, after having increased the classification of a number of commodities, raising them, we will say, from four to three or from five to four, put in force new tariffs, substituting, we will say, instead of a third-class rating for a former fourth-class one a third-class rating less 20 per cent. So that in detail I should modify some of those statements, and will do so with your permission.

The CHAIRMAN. We will resume your statement on Monday morning, Mr. Ripley.

The committee thereupon adjourned until Monday, May 15, 1905, at 11 o'clock.

MONDAY, *May 15, 1905.*

The committee met pursuant to adjournment.

Present: Senators Elkins (chairman), Cullom, Kean, Dolliver, Foraker, Clapp, and Newlands.

Senator DOLLIVER (during the afternoon session). I am going to ask the committee to excuse me on account of illness, as I am suffering from a neuralgic pain in the head and eyes; and I should like the record to show that I was absent Friday and Saturday from the same cause.

The ACTING CHAIRMAN (Senator CULLOM). That is thoroughly understood, and we are very sorry to know of your illness.

CONTINUATION OF STATEMENT OF MR. WILLIAM Z. RIPLEY.

The CHAIRMAN. You may proceed with your statement.

Mr. RIPLEY. Mr. Chairman, may I add, if you please, to the statement of my reasons for interest in this problem that during the last six or eight months I have been serving in an advisory capacity with the Director of the Census in the investigation of the valuation of railway property in the United States—purely in an advisory capacity, however, having nothing to do with the actual work of enumeration or tabulation.

The general situation, it seems to me, may best be described by comparing it to a strong, healthy man with a cinder in his eye or a pebble in his shoe. That is to say, the general condition seems to be sound and good, but, as in the case of the man thus afflicted, the attention of the afflicted person is concentrated not on his generally sound situation, but upon that particular cinder or pebble which occasions the trouble.

It seems to me that the province of legislation should be, first, to discover what the trouble is; secondly, to make sure that that trouble is dealt with by the existing law; or, thirdly, if not dealt with by the existing law, that some reasonable amendment should be made to cover the case.

If I may, I should like to discuss those three phases of the matter in their order:

1. What are the evils and what is their relative extent?
2. Are they all, or in part, covered by the law?
3. If not covered by the law, what suggests itself as a remedy?

As to the relation of these three evils, what are they?

Four conceivable ones occur: (1) Preferential rates or discriminations, which I believe are all dealt with adequately by the existing statute which bears the name of this committee; (2) absolute freight rates; (3) discrimination between localities or between commodities—that is to say, relative freight rates; (4) not of rates at all, but of rights; for instance, the right of a shipper to control the routing of his freight, the right of a shipper to prescribe conditions under which his product may be transported.

Senator KEAN. You think the shipper ought to have the right to say over what route his goods shall go?

Mr. RIPLEY. That is a question I expected to discuss later. It simply involves a leading case which has been recently passed upon by the Interstate Commerce Commission, the decision of which has been upheld by the circuit court of the United States.

Of these three classes of evils, first, as to absolute freight rates, it seems to me that the general level of freight rates at the present time is reasonable; that the increases that have been made during the last five years have been, in the main, justified by the increased cost of operation and other increased expenses.

I am inclined to think, however, that this increase has been greater than has appeared in the testimony before this committee in some instances. Take, for example, the exceedingly able brief of Messrs. Willcox and Spencer, which recites, measuring by ton-mileage revenue, that the increase has been about 5 per cent during the last five years. In order to be perfectly specific, I have had some correspondence with a number of shippers and have obtained some concrete freight rates for 1895, 1900, and 1905, and the point I should like to make upon these is this: That while the average increase has been, perhaps, not excessive, it has varied very greatly as between different commodities, and that while the average, as measured by the ton mile, has been 25 per cent, still it has been reduced in some cases and in others they remain where they were before.

Senator CULLOM. I suggest that it is said that the through rates on long haul are reduced, but that the rates between consuming points are two or three times as high in this country as they are in England; for instance, that for a distance of 20 to 30 miles the rates are much *higher* here than in England. What do you say to that?

Mr. RIPLEY. That may be true. I am not prepared to say, because the conditions of transportation are so absolutely different. In England the delivery is included, and a number of other conditions apply there that do not apply here. I believe, however, and that was to be the gist of my testimony, that the railroads of the United States as a whole, to their own financial disadvantage, cultivate too much the exceedingly long-haul business—that is to say, one railroad is trying to get over into the territory of its neighbor, and that neighbor, in turn, is trying to get into the territory of its competitor, so that they are both doing what I may call business at arm's length, or at an exceedingly long haul. Each is trying to do the business of the other in some degree. I say that most guardedly, because I do not mean in the least to imply that the long-haul business from the center of the country, in or out, is not absolutely essential and to the benefit of the country. But, if you please, I would like to postpone the consideration of that for a time.

Senator CULLOM. Certainly. I only threw that out as a suggestion which occurred to me.

Senator FORAKER. I suggest, as Mr. Ripley seems to have his statement prepared in logical form, that we postpone our questions until his argument is completed. I think he should be allowed to proceed in his own way.

Senator CULLOM. I will not disturb Mr. Ripley further. I only made that suggestion in order that he might not forget it before he concludes.

Mr. RIPLEY. I have it distinctly in mind. I am much obliged for the suggestion, and will take up that point a little later in my argument.

Senator CULLOM. Take your own course.

Mr. RIPLEY. I have had sent to me by a large shipper in Boston, a gentleman who has much to do with these matters, a statement giving the different rates on boots and shoes for less than carload lots between Chicago and New York. In 1895 it was $1.12½; reduced in 1900, 1902, and 1905 to 75 cents. That is a substantial reduction. I am trying to present the whole situation to you as well as I can.

Canned fruit and fish:	
1895, fourth class	$0.35
1900, 20 per cent less than third class	.40
1902, 20 per cent less than third class	.40
1905, 20 per cent less than third class	.40
One-seventh advance, or 15 per cent.	
Cement:	
1895, fifth class	.30
1900, fourth class	.35
1902, fourth class	.35
1905, fourth class	.35
One-seventh advance, or 15 per cent.	
Coffee:	
1895, fourth class	.35
1900, 20 per cent less than third class	.40
1902, 20 per cent less than third class	.40
1905, 20 per cent less than third class	.40
One-eighth advance, or 12 per cent.	
Dry goods:	
1895, first class	.75
1900, first class	.75
1902, first class	.75
1905, first class	.75

Glass:	
1895, third class	$0.50
1900, 20 per cent less than third class	.40
1902, 20 per cent less than third class	.40
1905, 20 per cent less than third class	.40
Reduced 20 per cent.	
Glassware:	
1895, second class	.65
1900, 15 per cent less than second class	.55
1902, 15 per cent less than second class	.55
1905, 15 per cent less than second class	.55
Reduced 45 per cent.	
Lumber:	
1895, fourth class	.35
1900, fourth class	.35
1902, fourth class	.35
1905, fourth class	.35
Paints:	
1895, fourth class	.35
1900, fourth class	.35
1902, fourth class	.35
1905, fourth class	.35

The rates from New York to Pacific coast points, all rail, less than carload, on some of the principal items have been as follows:

Crockery:	
1895	$1.57
1900	1.30
1905	1.30
Hardware:	
1895	2.13
1900	1.50
1905	1.50
Glassware:	
1895	1.38
1900	1.50
1905	1.50
Canned goods:	
1895	1.77
1900	1.50
1905	1.50
Cotton piece goods:	
1895	2.13
1900	1.50
1905	1.50

In respect of grain the rates have been considerably increased and have been the subject of investigation by the Interstate Commerce Commission in a special case; and it was shown that whereas for many years grain was carried from Chicago to New York for practically anywhere from 11 up to 17½ cents, which was the then published tariff, the rate was increased to 20 cents in 1903, and by reason of the excellent Elkins law it has been maintained at 20 cents. The contrast is therefore between 20 cents to-day and a rate which varied anywhere from 11 to 17½ cents during that period. But that rate, although it was a cut rate, was open to everybody. It was clearly shown before the Commission that practically all the grain went at a rate less than 17½ cents, which was the rate that formerly prevailed. Bringing these rates chockablock up to 20 cents results in an increase, in practice, of anywhere from 40 to 50 per cent.

In addition, there have been the increases complained of before this committee, increases, we will say, on lumber from the South or Southwest, and on cattle, and there have been a great many increases

on iron and steel, as I understand. I instance these solely and simply to indicate that when a statement is made that a general increase of 5 per cent has been made that does not illustrate the true conditions, but that there have been different degrees of increase which would have resulted in such an increase as to make the average upon coal and other necessities as shown in the brief of Messrs. Willcox and Spencer. The general figures of ton-mile revenue show overwhelming differences. In the first place, a larger amount of goods, I suspect, than any of the members of this committee know, go on special or commodity rates by rail. I have here a letter from the general counsel of the Boston and Maine Railroad, with whom I have taken up this matter, a portion of which I desire to read.

Senator FORAKER. What is the date of his letter?

Mr. RIPLEY. March 31, 1905. This was a friendly attempt on the part of both of us to find out how much goods go by—I do not mean to say by cut rates, but what I mean is, that they go at what are called "commodity rates," special rates.

Senator FORAKER. But they are published rates?

Mr. RIPLEY. Published rates, open to everybody.

Senator FORAKER. Made in compliance with the law?

Mr. RIPLEY. Entirely. This is what he says:

In the course of trying cases before the Interstate Commerce Commission I have frequently made inquiries of traffic men on this very point, and there is a singular unanimity in their judgment, all of them stating that the amount thus carried contains from 75 to 80 per cent.

That 75 to 80 per cent of American railway commodity rates goes at just the highest figure that is compatible with the business, and those rates have not been raised. A large amount of the increase that has produced this general average increase has had to fall on a relatively limited number of commodities, and on some of those the increases have been 15 to 25 per cent, and in some cases, in practice, as much as 40 or 50 per cent. When a comparison of the figures for 1905 is made with those for 1900, it might well have occurred to Messrs. Willcox and Spencer that a far larger amount of low-grade tonnage was moving at the later date, and that that would tend to hold the average figure down in that case. But, in any event, it seems to me that no disproportionate amount of increase in any of these rates has been proven. That does not mean, however, that there may not be in the future.

Senator FORAKER. What do you mean by any disproportionate amount?

Mr. RIPLEY. I mean disproportionate increase of cost of coal, wages, and the like.

Senator FORAKER. In other words, that the increases, in the circumstances, are reasonable?

Mr. RIPLEY. They seem to me to be so. That, however, does not touch the far larger question of whether this power, having been demonstrated to increase freight rates, it may not be that the increases may be continued in the future in increased cost of operation, of coal, etc. That is a question which pertains to the future, however, rather than to the present.

Passing now from the figures of absolute freight rates for the country as a whole, to take certain specific instances in which there may be complaints, I would refer to the case which has been so long

before the Interstate Commerce Commission, and I think the courts, concerning the terminal and switching charges at Chicago, on which a rate, which was formerly $2, I think, was afterwards increased to $5 per car. That case was taken before the Interstate Commerce Commission, and there is much documentary evidence upon that point.

As to the reasonableness of any one specific increase of that sort, I am not prepared to state. It may well be that some are reasonable and others not. But the question before the committee, as I understand, is whether a tribunal ought not to be instituted to pass upon the reasonableness of those rates.

Another instance of an increase of freight rates absolutely, which may sometimes work substantial injustice, I would bring to your attention from the important case before the Commission, known as the "Savannah naval stores" case. May I illustrate by the map, Mr. Chairman?

The CHAIRMAN. Yes; so that all the members can see.

Mr. RIPLEY. Down here in Alabama is the territory on the line of Louisville and Nashville, making a sort of L across here. Cotton may go to New England or to Europe, either around this way, westward, or out here to Savannah, or down this way. This Savannah naval stores case was decided January 8, 1900, concerning a complaint of Savannah that the Louisville and Nashville had dammed up this outlet for their cotton by imposing an arbitrary rate from this territory in this direction. Why? In order to force the cotton over a longer haul on that railroad, which, of course, would be far more profitable to that company that the short haul, until it struck the connection which would carry it over to Savannah. The Savannah shippers, or cotton men, complained that the damming up of that outlet was an injustice to them; that they were entitled to have the advantage of that outlet. The Commission decided in their favor, and that case has been carried to the circuit court.

Senator FORAKER. I do not understand how they dammed it up, as you say.

Mr. RIPLEY. Simply by imposing a heavier freight rate from points in Alabama eastward than for similar freight in the other direction.

Senator FORAKER. Does the Louisville and Nashville still own that railroad to the east?

Mr. RIPLEY. There are probably two or three connections, and with each one the Louisville and Nashville would get a haul of a few miles.

The CHAIRMAN. What are the relative distances by the different routes to Savannah?

Mr. RIPLEY. I have not those figures in my head. All those facts are stated in the record of this case.

Senator CULLOM. What you mean by damming up is high charges for a short haul?

Mr. RIPLEY. Not for the short haul, but for the whole haul.

Senator CULLOM. There are a half dozen short hauls in there.

Mr. RIPLEY. Yes; but they all come out at Savannah.

Senator CULLOM. And the charge was so high that they could not go out?

Mr. RIPLEY. Yes, sir. Those are all described in this report of the case, which was decided, as I say, January 8, 1900, by the Interstate

Commerce Commission holding that damming up this outlet on the end of that foot of the L of the railroad was an injustice to Savannah.

Senator FORAKER. We have been told about cotton being shipped around by way of Cincinnati for use in the factories of New England.

Mr. RIPLEY. I think this may cover cotton both ways or one way. I am not sure. I will look this up if you care.

Senator FORAKER. No. Why not have that brief printed in the record?

The CHAIRMAN. Was that appealed from?

Mr. RIPLEY. This was appealed to the circuit court of the United States, which has decided in favor of Savannah.

The CHAIRMAN. In favor of sustaining the Commission?

Mr. RIPLEY. Sustaining the Commission.

It seems to me that you have here one of those rare cases of the imposition of absolute freight rates which operates injustice to the community—one case in a thousand, if you please, which exasperates the people and leads them to think that the whole situation is wrong, when, as a matter of fact, there may be only one railroad to blame, or possibly only one official of that railroad who is culpable.

Senator FORAKER. It is a case of the pebble in the shoe.

Mr. RIPLEY. It is the pebble in the shoe.

Senator CULLOM. Who was the judge?

Mr. RIPLEY. I have not the name of the judge, but this is my reference to the case: 118 Federal Reporter, 613.

It will be my attempt in testifying before you to isolate a sufficient number of those pebbles in the shoe to show you why I think in these scattered cases the people demand a remedy, and you can then, by discussing concrete cases which you may regard as typical, as it seems to me, more clearly arrive at the remedy.

Senator FORAKER. You have examined the Elkins law, which is said to afford a specific and certain remedy for these identical cases?

Mr. RIPLEY. I believe that for these cases there is probably a remedy. I believe there is a probable remedy to-day under the law for a great many of the difficulties of absolute freight rates that are unreasonable.

Senator FORAKER. Can you tell us when that proceeding was commenced before the Commission?

Mr. RIPLEY. It does not state in the record. This is the original publication of the Interstate Commerce Commission.

Senator FORAKER. This was decided, you say, January 8, 1900, so that it was before the Elkins law was passed.

Mr. RIPLEY. And the decision of the circuit court was not until 1902.

Senator NEWLANDS. Can you find when that proceeding was instituted; how long it took from beginning to end?

Mr. RIPLEY. From a casual examination I find no mention of that here.

Senator FORAKER. The only point I wanted to make was that it was all prior to the passage of the Elkins law. But the court sustained the Commission, and I would like to ask Mr. Ripley whether he knows what the railroads did—whether they complied with that order?

Mr. RIPLEY. I can not tell you, sir.

Senator FORAKER. Of course they did comply if the decision was sustained. But now, instead of going to the Commission in the first

instance, since the Elkins law was passed they can go into court and correct an abuse in two or three weeks' time.

Mr. RIPLEY. I am inclined to believe that that is true as to absolute freight rates. The main point that I want to emphasize to you is this: That in the second class of rates, to which I am coming—namely, relative freight rates—there is another remedy at law to-day. I will try to make that clear, if I may, because that is in flat contradiction of the statements a large number of railway witnesses have made here.

The CHAIRMAN. You mean relative rates between communities?

Mr. RIPLEY. What we may call "local discriminations."

Senator NEWLANDS. How about commodities?

Mr. RIPLEY. I am not sufficiently informed to state, but I should think that a circuitous method of obtaining justice—an indirect method—would be possible.

I instance this Savannah case to show exceptions to the general statement that the interests of a railroad and its constituency are always one. The statement has been made here time and again that you can not injure the constituency of a railroad without injuring the railroad itself. That is absolutely true in general, like so many other cases. It is true that the prosperity of a railroad is closely connected with the prosperity of the territory it serves. But it is also true that in a large number of cases the railroad may choose between two policies, one of which will help it a good deal more than will another, and it may choose to adopt the policy which will help it the more, regardless of the prosperity of the community, that is, when it will gain more by doing a certain thing than it will lose by not doing it. In this case the Louisville and Nashville Railroad certainly can only prosper when the territory it serves prospers. I believe its policy and the policy of the Southern Railroad is to build up the country. But here was a case where, by turning the freight eastward, they only got a short haul and then had to divide that with another railroad, whereas by turning the freight the other way they might perhaps have received a very much larger proportion of the whole rate. But they took that action in that one case out of a thousand in their own interest, and, as business men, properly did so.

Senator FORAKER. What have you to say about discriminations between localities? That is something in which we are all very much interested.

Mr. RIPLEY. I may illustrate a few cases of such discrimination.

Senator FORAKER. I did not want to interrupt; I only wanted to direct you to that point.

Mr. RIPLEY. That is the main matter to which I wish to draw the attention of the committee.

Under this second class of evils we may find, first, discrimination as between commodities in relative rates; and, secondly, discrimination as between localities. The main center of unrest, when there is any, in respect of discriminations between commodities is found in the great subject of classification. That is a most complicated topic, one which is somewhat fully discussed in the report of the Industrial Commission. We devoted a great deal of time to the examination of certain witnesses, and particularly in the examination of Mr. *McGovern*, chairman of the southern classification committee, in

which I think the nature of classification in and for itself was fairly well brought out.

In fixing the relative rates on commodities injustice may sometimes result, and in those cases it is possible that the interest of the railroad and of the shipper may not be the same. They are the same in general, but in particular cases they do not work in harmony. The case which I would instance, as a probable typical one, is found in Nathan Myer *v.* The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, decided November 27, 1901, a copy of which I have here. This was a case raised by the owner of the Pioneer Hat Works at Wabash, Ind. His complaint was that hatters' furs, fur scraps, and cuttings were wrongly classified, in that they were charged at double first class, while his plea was that hatters' furs should only go as first class and that fur scraps and cuttings should go as second class. Of course you will understand that I shall not attempt to pass upon the facts in this case. I take them as printed in the official record. The facts in the case seem to show that here was a small manufacturer located in the West who was compelled in business to meet competition from the great manufacturing centers in the East, and he complained that by the time he had paid these rates on his raw material and then paid the rates on his finished product he could not do business in the Middle West in competition with other manufacturers.

The immediate answer that will suggest itself to you, I am positive, is that the railroad would rectify this difficulty if it found the complaint well founded. Why should not a railroad, if it finds on its line a manufacturer who is in distress, remedy the difficulty and help to build up the manufactures that help to build the railroad? They may do that, but mind you, the classification is made, not by the railroad on which this factory is located. That classification of hatters and furs at double first class is made by all the railroads in the trunk-line territory in the official classification. Consequently the only way that the railroad can be benefited is to pool its issues with all the other railroads serving the manufacturers in the East, and they bring up the matter before the classification committee, and they find that they lose more business on the great bulk of manufacturers than they gain on this one, and consequently the majority of the roads make the rate for the one road.

The suggestion I have to make to you is that it may be worth while to take a lower rate in order to promote the welfare of the whole country, which it certainly would do in building up the West. And I say that although I come from New England, where the greatest competition in manufactures is at present located. Whether there ought to be double first class or not is not for me to say.

Senator FORAKER. Could not the railroad under the law have made a special commodity rate for that man?

Mr. RIPLEY. I suppose it might.

Senator NEWLANDS. But only with the consent of the other roads?

Mr. RIPLEY. No; I will not be positive about that. But understand, special commodity rates are generally made for carload lots, and special rates are made generally for considerable shipments. There are constantly occurring great numbers of exceptions to classifications, which occasion the greatest difficulty to the shipper who

wants to find out what the freight rate is. It is often impossible to discover what that is, because there are so many special rates and exceptions. But it would appear to me to be plain that if there is an unjust discrimination as against hatters' furs, there ought to be some tribunal which should give a prompt remedy, one available to a small manufacturer, to whom it made a difference of only $1,000 a year whether he paid this rate or what he thought was a reasonable rate. It is not a big enough issue to make it worth while for him to spend time and money to push the thing for years. Not only would this help that shipper, but it might help the railroad, which had been blocked by the other railroad, in its desire for real and substantial justice.

Other possible evils under the head of discrimination between commodities we find in the leading cases which have been so prominently before the Commission as to relative rates on wheat or flour to the shipper, or rates on live cattle relative to meat products. Those are an extremely delicate class of adjustments, which, under present arrangements, occasion great irritation to a great body of shippers.

Now for the most important of these relatively minor difficulties at the present time, namely, discrimination between localities. This involves the interpretation of the long and short haul clause, section 4 of the original act of 1887. At page 433, volume 19, of the Final Report of the Industrial Commission will be found a brief account of the decisions which have gradually undermined that long and short haul clause, section 4, which, in my judgment, in the original constituted an important part of one of the most beneficial general laws that has ever been passed by Congress, and, Mr. Senator Cullom, I am proud to stand here and say to you that I believe it is the judgment of practically all the economists that that law was a beneficial statute and that its effects were good until it was undermined in spots by the courts.

The long and short haul clause was accepted in good faith by the railroads of the country after 1887. Everybody thought that the interstate-commerce act, in its definition of powers, was a real thing, and the railroads conformed their local tariffs to this law in a considerable part of the country. I think the long and short haul clause in the main was observed under the system which Mr. Bird mentioned in his testimony the other day all through the trunk-line territory—and trunk-line territory comprises, according to the statement of a railroad man (I can not cite to you the authority at the moment) covers something like two-thirds of the total railroad mileage of the country. The long and short haul clause is observed. It is observed to-day through a large part of the Mississippi Valley, so far as I can discover, but it is not observed all through the southeastern section of the United States, and it is not observed on transcontinental traffic, and I believe in those places where it is not observed it is, again, a constant source of irritation to the people. I am not at all sure you could ever apply the long and short haul principle rigidly. I know you could not in many cases, and I believe where the people have not been able to have the matter clearly set before them it is a source of irritation.

To show you what, in its extreme development, the long and short haul principle may mean, I should like to describe the situation as it exists in the Southern States. There, again, at page 373, volume 19,

of the final report of the Industrial Commission, I have stated the conclusions which resulted from nearly two months spent in journeying all through the Southern States and looking into that question.

Senator KEAN. What year?

Mr. RIPLEY. 1900. I went through the Southern States, and I understand that practically the conditions and the rate schemes which are in force there have been unchanged for about twenty or twenty-five years.

Senator KEAN. How can that be? On the contrary, have not the conditions changed greatly?

Mr. RIPLEY. They have changed greatly, but under the adjustments between the railroads they are almost the same that they were before.

Senator KEAN. How could these furniture companies start in North Carolina, and how could these manufactories start in South Carolina, if that be so?

Mr. RIPLEY. I have some letters here which might throw some light on that point. A large part of that business is carried on special rates which are exceptions, but the general scheme remains much as it was before.

This condition of affairs in the Southern States is described in a long series of cases before the Interstate Commerce Commission (notably those of Troy, of Hampton, of Dawson, and three or four others) which betray a good deal of dissatisfaction by the people with the application of what is known as the "basing-point system." To make the matter concrete, again let me refer to the map.

The freight rate from New York into the South will be made to a given point, as Atlanta, and then the rate, still the through rate, from New York to points all around Atlanta will be compounded of a low through rate plus a relatively high local rate, so that while Atlanta is a depressed point in the freight-rate adjustment and all around it you have these rates rising, the result is to concentrate distributing business in that center, much to the dissatisfaction of the surrounding places. This is not altogether arbitrary, but is accounted for largely by reason of geographical conditions. The whole country is threaded by rivers, so that water competition has to be met.

But, in addition to giving rates to a number of cities on the water, they have constituted as basing points a number of other towns which have no water competition. I do not know how many there are. That could be easily ascertained from the record. But all through that territory that is regarded as a discrimination.

Senator KEAN. In favor of Atlanta?

Mr. RIPLEY. In favor of all basing points. This was the statement which came to me from a man with whom I had conversation in the South, and I believe it represents the relative disproportion in the matter of rates. It may be changed a little now, but the rate he gave me was for less than carload lots, New York to Atlanta, 48 cents, whereas the rate on the same commodity on less than carload lots to Suwanee, Ga., 31 miles nearer to New York, was 86 cents. That is a very high disproportion. I will not say that it is just exactly 48 cents in the one case and 86 in the other, but it is as great as that in many instances.

Another peculiarity of this situation is that not all the railroads in the South have *adopted this* basing-point system. A number of

them still adhere, or try to as well as they can, to the long and short haul principle. So that you have, as I find in notes of a personal interview with Robert McLester, of Birmingham, Ala., the policy of the different rates in the long and short haul tariffs. While the Alabama and Great Southern, for instance, as also the Kansas City, Memphis and Birmingham, are supposed to put their rates on the long and short haul principle, the Louisville and Nashville does not. The policy of the Southern varies. I have been given to understand that the Southern tries to comply with the long and short haul clause, but when freight goes beyond Atlanta things begin to get confused.

This is not the outcome of any desire on the part of those railroads to oppress the people, but there is an artificial jacking up, if I may use that term, of those rates whereby this road, which wants to make a charge, is not permitted by that road to make the charge under threats of retaliation. At least, that was the situation until the Louisville and Nashville and the Seaboard Air Line became practically one, and I suppose work in harmony with the Southern. But still the situation may be likened to men who have their hands on each others' throats, and are yet both trying to do business at the same time. The Louisville and Nashville says, "If you change the adjustment over here on my road, I will turn around and change the adjustments on your roads;" and so nobody likes to move first.

Senator FORAKER. Tell us why that is so, if you can.

Mr. RIPLEY. I should have to go back historically. It is a long story and very complicated.

Senator FORAKER. Then please do not tell us.

Mr. RIPLEY. I am not anxious to.

Senator FORAKER. I supposed it was because rates are correlated in such a way that you can not disturb the rates of one place without disturbing the equilibrium.

Mr. RIPLEY. About the only way, it seems to me, to change many of the rates in the South would be to go at the matter in a somewhat comprehensive way, similar to that which existed a few years ago, when the railroads all tried to get a committee, headed by Mr. Pope, a railroad man—I have his testimony here somewhere—to apply the long and short haul principle as a whole in southern territory as it had been applied after 1887 in the North; but they found, of course, that there was water competition at all these little river points, and they found also that the roads were considerably interlaced, so that if you changed one you had to make a corresponding change in the other, so that they would have to all act jointly. But there is always one road that will not act, just as Mr. Bird illustrated, though he did not tell the whole history, when they spoke about unifying classification for the United States. The railroads appointed a committee to bring together the western, the southern, and the official classification, and they adopted a unanimous report, and then that report could not go through because the New York Central, and perhaps some other lines—I think not more than two or three—had so many special and commodity rates out that they did not want to have them all thrown out by a new classification; and by the refusal of two or three roads to go into the combination they made it impossible to adopt a uniform classification. I am not able to conceive how they devised a uniform classification for the United States, but that they did it by unanimous

vote was instanced by Mr. Bird the other day, and so far as I have read the reports of the Traffic Association it was true.

Little by little the force of the long and short haul clause has been whittled away. Finally, by the Alabama Midland decision, which held if you could ever establish competition of markets or works at a great distance so as to constitute dissimilar circumstances and conditions it did not make any difference whether that was competition by water, competition in business, or competition of railroads. The long and short haul clause did not apply. As representing the view which seems to me to be just, I should like to read from the dissenting opinion of Mr. Justice Harlan in the Alabama Midland Case, 168 U. S., 176.

Senator FORAKER. For what purpose?

Mr. RIPLEY. To show you that a member of the Supreme Court of the United States held that this decision finally cut the entire ground from under the feet of the long and short haul clause:

> Taken in connection with other decisions defining the powers of the Interstate Commerce Commission, the present decision, it seems to me, goes far to make that Commission a useless body for all practical purposes and to defeat many of the important objects designed to be accomplished by the various enactments of Congress relating to interstate commerce. The Commission was established to protect the public against the improper practices of transportation companies engaged in commerce among the several States. It has been left, it is true, in its power to make reports and to issue protests. But it has been shorn by judicial interpretation of authority to do anything of an effective character. It is denied many of the powers which, in my judgment, were intended to be conferred upon it. * * * Under such an interpretation of the statutes in question they may well be regarded as recognizing the authority of competing railroad companies engaged in interstate commerce, when their interests will be served thereby, to build up favored centers of population at the expense of the business of the country at large. I can not believe that Congress intended any such result, nor do I think that its enactments, properly interpreted, would lead to such a result.

Repeatedly the Supreme Court of the United States has said, "We do not claim that in undermining the fourth section we are seeking the welfare of the United States; that is not our province; that is the province of the legislature; we are seeking to apply the law." And the law, as they have held it, vitiates the long and short haul clause.

In general, it seems to me, if I may criticise the general railway policy of the country at large, we are drifting toward an exaggerated opinion of the value of long-haul traffic. A large part of it is essential. The whole country never could have been built up, and especially could the West never have been built up, without low through rates. Nobody wants to do away with them. Wherever low rates create new business I believe it to be beneficial. But where a new rate, a special-commodity rate, enables a road here to go into the territory of another there and take away the business which was properly tributary to that road there and is immediately met by retaliation, then both roads are not only bound by their common interests, but there is a triangular interest on business which belongs to all the roads, and it seems to me that we are indulging in economic waste. That idea was developed in a paper which I read at the International Congress of Arts and Sciences last September at St. Louis and which is not yet printed. I found the other day in talking with Judge Knapp, of the Interstate Commerce Commission, that he has arrived at exactly the same conclusion, although what I characterized

as waste in transportation he has characterized as superfluous transportation.

You will find all over the country odd examples of evasion by going around and coming in the back door, or going up on the roof and then coming down the chimney, or coming up through the cellar. You will find that Massachusetts, ever since the Ames Shovel Company was established, the center of manufacture of agricultural implements, trying to sell goods all over the country; and yet I, in the neighborhood of Boston, buying my garden tools, discovered that they were made in Iowa. Is it not economic waste to have too much of that business? We in Massachusetts certainly do not want to be filled up with agricultural implements made in the West. The only thing that will save manufacturers in Massachusetts is to have long-haul business, and I claim that that does not help us to buy agricultural implements made in Iowa.

Senator FORAKER. What is the name of the house that manufactures those implements in Iowa and which you purchase in Massachusetts?

Mr. RIPLEY. As I remember, they came from Madison, Iowa. I bought three garden rakes, and discovered from the labels on the handles that they were all manufactured at the same place. I am not sure of the name of that place, but I will insert that upon the revision of my testimony.

Senator DOLLIVER. They were manufactured in one of the penitentiaries of the State.

Senator FORAKER. They are convict-made goods.

Mr. RIPLEY. I do not know how that is.

Senator NEWLANDS. We have had some testimony here in regard to potatoes raised in Michigan in competition with Maine potatoes, and that competition from Michigan was so great that the railroads were compelled to reduce the rate on Maine potatoes in order to meet that competition.

Mr. RIPLEY. And yet it would seem necessary to Boston that potatoes should come from both places.

Senator NEWLANDS. It certainly is.

Mr. RIPLEY. I say it is an assentially sound principle, but it is possible to push it too far.

Senator KEAN. What would you suggest to cure this evil?

Mr. RIPLEY. The only suggestion I could make is to give a possible force to the long and short haul clause.

Senator KEAN. Is not that practically getting rid of competition?

Mr. RIPLEY. No; I do not mean an absolute distance tariff; I mean a tariff such as has been in force for twenty-five years all through trunk-line territory.

Senator KEAN. Then you would give the railroad the monopoly of a particular traffic, if it has a shorter haul?

Mr. RIPLEY. I do not mean to say that for 100 miles around on each side.

Senator KEAN. Whichever road had the shorter line would have the monopoly; that is what I want to get at.

Mr. RIPLEY. No; I illustrate this by going back to the instance which has been brought up here a number of times in the testimony and cited by Mr. Meyer, formerly an instructor at Harvard, and an expert in these matters. He mentioned 14,000 cows in Berlin as an

illustration of the evil of having a distance tariff. I think there is no danger in this country of going to the other extreme, and having so near a flat rate on milk that you can have all of the people of the United States in New York, concentrate the population there and feed them there. In other words, if Buffalo, by a flat rate on milk gets milk from away down near New York, while other places between should get milk from near Buffalo, it seems to me there is superfluous transportation there. This milk question is so vital that I wonder if the committee is aware of the fact that the Massachusetts commission, so often cited as an advisory commission, has been given by the legislature of Massachusetts absolute power to fix rates on milk. That is the only class of traffic on which we have a mandatory commission in Massachusetts.

Senator CULLOM. I never heard before that the legislature had given that commission any power except to investigate and report.

Mr. RIPLEY. That is my information from two sources, and I believe it to be true.

Senator DOLLIVER. How has that power been exercised?

Mr. RIPLEY. I have been told that since I came here, though I have not had a chance to verify it, but I believe Judge Knapp told me the other day. I can verify that, and will correct it in revision if I am wrong.

Senator CULLOM. I am not disputing your statement; I am only surprised.

Senator DOLLIVER. I should like to know if they had the power to fix the rate on anything but milk in Massachusetts.

Mr. RIPLEY. I know they have taken cognizance of the milk tariff. I do not know that the law has empowered the commission to make the rates on anything else.

But pardon me; that is not the issue. The point I am trying to make is this: That there are influences at work which slowly but inevitably are concentrating our population in the large cities, and the big cities have nothing of which to complain. Who are they that complain here? You will find that they are shippers from St. Paul and Minneapolis, representing people of the country districts and small-sized towns.

It is not for me to suggest to you what the decisions should be. I have only to suggest that there is an influence at work here tending toward that concentration.

Senator FORAKER. We have had gentlemen here from Janesville, Racine, Dubuque, and other places in Wisconsin and Iowa.

Mr. RIPLEY. I am aware of that, but my lectures at Harvard cover a course on trusts or corporations, a course on labor, on railroads, and on statistics; and in every one of those four courses I have brought up in some way this question of concentration. If I take it up in statistics, I find the growth of the large cities is at the expense of small communities; if in the trust problem, it is somehow an advantage for the manufacturer to locate at a large place, an advantage which he ought to have. The only question to which I ask attention is that we should not unduly extend the principle of flat rates for all distances until we have an invasion by railroads of the territory of other railroads.

Let me give you another instance: Judge Knapp told me the other day of the case of a sash and blind manufacturer of Detroit who had

to meet the competition of sashes and blinds in the Boston market, made in some town in Vermont, the name of which I do not remember. But the competition was not even, because the man who had to ship east had to pay rates practically double what his competitor had to pay who wanted to ship west. The railroads are glad to have westbound traffic in order to equalize the movement of freight. Here were two men both competing for the Boston market, and both complaining that they were competing on uneven terms.

Senator CULLOM. If each of those gentlemen were getting rates satisfactory and not so high as to oppress the people, what hurt did they do?

Mr. RIPLEY. Did it ever occur to you that there is a real economic waste in carrying a thing a long distance and selling it, when it might just as well have been sold at home?

Senator CULLOM. But the eastern manufacturer could sell more sashes and blinds by sending them out West.

Senator FORAKER. I understand he sent his goods to Boston, and not out West.

Mr. RIPLEY. They both went to a common point; they both had the same service from railroads; but one was paying twice the rate the other paid.

Senator FORAKER. Perhaps he had only half the distance.

Mr. RIPLEY. No; I beg your pardon. The Vermont manufacturer was shipping sashes and blinds to Detroit.

Senator FORAKER. Ah! You did not put that in before. I thought you were leaving something out.

Mr. RIPLEY. The Vermont man was selling in Detroit and the Vermont man was selling in Boston, as was the Detroit man. I do not know many other instances of that kind you could find.

Senator DOLLIVER. We had the case of a cotton manufacturer in North Carolina selling cotton goods in Boston.

Mr. RIPLEY. Cotton sent to Boston to be converted into goods, and the cotton goods were sent back to South Carolina.

Senator DOLLIVER. He thought it was a good thing.

Mr. RIPLEY. But what is gained if one road invades the territory of another, which in turn invades the territory of the first road? To just the degree that the southern cotton man can compete with the northern, so is the northern man able to compete in the South. Still, that is business.

Senator KEAN. Is it not decentralizing industries?

Mr. RIPLEY. It occurs to me that in this instance it was pushed too far. We do not want to bottle up industries at all.

Senator FORAKER. It is the result of business energy and commercial freedom?

Mr. RIPLEY. And the result of a pretty low special commodity or flat rate, which has enabled them to get a way out. If you had a little bit more of the element of distance in your tariffs—I do not mean a prohibitory tariff to tie each man to his own town, but a little more invasion as to the element of distance—would it not tend naturally to hold each market a little more to the center in which it naturally belongs?

Senator FORAKER. Do you think that is desirable?

Senator NEWLANDS. You think perhaps that would change, in a measure, this tendency of great cities to increase in population?

Mr. RIPLEY. Yes, sir.

If I may go back to that milk case, the evil of applying too rigidly a distance tariff was to put 14,000 cows in Berlin; but did it ever occur to you that if you concentrate those cows in Berlin you have got to bring their food to them? Mr. Meyer did not tell you how they got their feed there. That is a great factor in the milk business.

Senator FORAKER. You are doing Professor Meyer an injustice. He told us the cows were fed from the swill.

Mr. RIPLEY. Then that obviates my objection entirely, but it does not obviate the main point, namely, that the milk that is going to New York is what ought to be going to Buffalo. The tariff ought to be adjusted with some slight regard to distance, but not enough to dam up the traffic, not enough to say that milk shall only come a hundred miles to New York.

Senator NEWLANDS. In that case of competition between Vermont and Detroit, what was it that was being manufactured?

Mr. RIPLEY. Sashes and blinds.

Senator NEWLANDS. Assume, for purposes of illustration, that 100,000 sashes and blinds were used in a year in Boston and 100,000 in Detroit; your idea would be to have the Detroit manufacturer make those 100,000 sashes and blinds for Detroit, and the Vermont manufacturer to make that 100,000 for Boston, rather than to have each send 50,000 sashes and blinds 2,000 miles?

Mr. RIPLEY. That is my point.

Senator NEWLANDS. You would regard that as economic waste?

Mr. RIPLEY. As economic waste.

Senator NEWLANDS. As I understand, you do not condemn the system of distances as an element in the tariff?

Mr. RIPLEY. Not at all; but I think we are going too far.

To continue your hypothetical case, I should like to see the situation whereby 75,000 sashes and blinds for Boston would probably come from Vermont, and 25,000 of them might come from a distance.

Senator KEAN. Do you think we could put that into law?

Mr. RIPLEY. I think you could throw a little more emphasis on that tendency—have more regard for the element of distance.

Senator CULLOM. What is your judgment on the question of legislating to prevent a railroad charging more for a short haul than for a long haul, each haul being in the same direction?

Mr. RIPLEY. I believe that would prostrate the business of the country in a moment. I do not think that ought to be done. But, at the same time, the law absolutely precludes a remedy.

Senator NEWLANDS. You can use neither the Commission nor the courts?

Mr. RIPLEY. Because the law says the competition at the greater distance is reasonable; it has permitted a rate, and as much higher as you please to make it.

Senator NEWLANDS. Whether that competition is by water or by rail.

Mr. RIPLEY. The Louisville and Nashville was at that disadvantage.

Senator NEWLANDS. There is nothing left under the short-haul clause.

Mr. RIPLEY. Just as Justice Harlan said.

Senator CULLOM. If you were in Congress and had the power, what would you enact?

Mr. RIPLEY. I would suggest that the long and short haul clause in the original law be so amended as to make it not always reasonable that competition at the more distant point should create dissimilar circumstances and conditions.

Senator FORAKER. Would you strike out these words which follow the requirement that there shall be no more charge for a short than for a long haul, namely, "under substantially similar circumstances and conditions?" If so, what would you insert in their place, or how would you amend it?

Mr. RIPLEY. I am not prepared to say exactly how that might be done in the wording. I would much prefer, if you please, to make the economic factor plain. I am not a lawyer, but the point is this: Suppose that there is a case, one in a thousand, where there is injustice relatively between places—one of those rare cases that occur sometimes; you seek an injunction, or the Interstate Commerce Commission seeks an injunction, to set aside that rate; if they go to the Elkins law, which, as I have said before, and I repeat it, is a highly beneficial statute, they find that an injunction may issue whenever the rate is unreasonable; but you go to the Supreme Court of the United States, and in the Alabama Midland decision it says that the lower rate for any distance to market does not create a condition. What is the judge of a circuit court going to do? The Alabama Midland decision has said that the lower rate for the market is reasonable.

Senator FORAKER. That is to say, the Alabama circuit court has said that it must be found that the difference that is made in the charges in a given case is not a difference that is justified by the conditions that actually exist.

Mr. RIPLEY. By the conditions of competition of railroad or market.

Senator FORAKER. And the court says that that requirement of the law applies only to substantially similar circumstances and conditions.

Senator NEWLANDS. And the circumstances are never similar.

Mr. RIPLEY. You can never apply the statute in that way.

Senator FORAKER. It is not forbidden by law.

Mr. RIPLEY. It is not forbidden in any case.

Senator DOLLIVER. In other words, you would not leave those words out of the exceptional clause.

Mr. RIPLEY. Would it not be better to define it a little in this way, by stating that in the creation of dissimilar circumstances and conditions the competition of markets or railroads shall not always constitute such dissimilarity? To-day the court says they always constitute dissimilarity.

Senator FORAKER. Do you know of anybody better qualified to judge than the average circuit court judge of a United States court?

Mr. RIPLEY. I personally should prefer that a body of experts of high character, the Interstate Commerce Commission, should pass upon it, because they will know better what is being done in the country. What does the judge of a circuit court in the Southern States, who has been called upon to pass upon a particular case, know about what is being done in some other part of the United States? It is a highly complicated and technical question, one which is not primarily a question of law, but it seems to me involves questions of fact.

Another thing, if you please, sir; that judge has no option in the matter. The moment you throw out competition of railroads and

markets for that more distant point the question is settled. He can not issue an injunction if he would.

A matter that astonishes me is that the Esch-Townsend bill has not mentioned this fact in any manner. That bill, if enacted as it stands, I believe would leave this most important feature of the law absolutely untouched.

Senator NEWLANDS. You would like the law as construed by the Supreme Court to apply, you say, to about 95 per cent of the cases, and the remaining 5 per cent you would like to have construed according to some rule which, as yet, you are unable to lay down in words?

Mr. RIPLEY. I should like to have it so worded as to permit the Commission to-day to apply a remedy in those 5 out of the 100 cases. That is perfectly possible by the wording, and I think you will find, upon an examination of the chairman of the Interstate Commerce Commission, that he has arrived, by an entirely different course of reasoning, at substantially the same result as I have already stated to the committee.

Senator NEWLANDS. Is it not better to assume that it was not the original intention, in passing the law, to shape it in such a way as to prevent railroad competition or competition for markets operating as dissimilar circumstances?

Mr. RIPLEY. I should be sorry to see competition of markets or railroads done away with to a great degree.

Senator NEWLANDS. Then you would approve of the decision of the court?

Mr. RIPLEY. I would not approve of an interpretation of the long and short haul clause which in any conceivable circumstances permits and makes reasonable a lower rate than to a more distant point. That is what it does to-day, in my judgment. That is to say, a town like Troy, Ala., comes here and complains that its rate is unduly high as compared with Montgomery, though Montgomery would not be a good case because they have water competition there. Suppose we take Atlanta or Nashville. I am perfectly willing to take Nashville, in spite of the fact that it is on a river. Mr. James J. Hill testified before the Senate committee dealing with the question of pools, about 1896 or 1897, that there was no more real competition at Nashville than there was in the Rocky Mountains. I give it in his words. That is a rather extreme statement.

Senator DOLLIVER. Take it at Knoxville.

The CHAIRMAN. I suggest that we let the Professor proceed, and then we will each have ten minutes to ask questions afterwards.

Senator DOLLIVER. I mention Knoxville because that was spoken of here the other day.

The CHAIRMAN. Proceed, Professor.

Mr. RIPLEY. I was taking the instance of a small place, which we will say complains of Atlanta, by reason of railroad competition, getting a lower rate than that small place enjoys. The Interstate Commerce Commission rules, we will say, that that is an injustice to the smaller place. The case goes to the court, and the court finds that there is railroad competition at Atlanta, not water competition or competition of markets. It therefore is obliged to hold, under the Alabama Midland decision, that the rate is reasonable. There is no room left, as I see it, to rule otherwise, and that is the opinion of

Judge Knapp, of the Interstate Commerce Commission, and that is the reason why I believe the Commission has never tried to apply this law since the passage of the Elkins act. But suppose they did; you will find in section 3 of the Elkins bill:

> That whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier is engaged in the carriage of passengers or freight between given points at less than the published rates on file, or is committing any discrimination forbidden by law—

What discrimination is forbidden by law? No discrimination between places, because the Alabama Midland decision held that if you can prove competition of railroads or markets at the greater-distance point that creates dissimilarity, and therefore exemption.

Now, as to the nature of the remedy—namely, to confer the power upon the Interstate Commerce Commission not only to discontinue the rate but to prescribe a new rate.

I have felt heretofore that it was absolutely essential to provide an adequate remedy, mainly on the ground that when there is a contest between two disputants it is fairer that a disinterested umpire should name the conditions under which the continuing business shall be transacted until the matter is settled by the court. It will be settled by the court anyway if the dispute continues. It is not a question of the general rate-making power, it is a question of the application of a rate during, it is to be hoped, so large a portion of that time as will ensue between the initial decision and the pronouncement of the court. That is all that is involved, because after the court passes upon it it has gone beyond the Interstate Commerce Commission. Theoretically it seems to me that that is a fair proposition.

Senator CULLOM. Would you have the law so as to allow the Commission to make rates?

Mr. RIPLEY. To allow the Commission on complaint to prescribe a rate which shall prevail until the courts settle the matter, of course, in the interim. But a somewhat tentative thought in this matter leads me to think there may be possible a step short of that which will produce the same result and which will obviate to some degree this objection that you are going too far in giving general rate-making power. Why would it not be sufficient to make the law explicit as to the power of the Commission to order the discontinuance of a rate? You will say that they can do that to-day under the Elkins law. They can do it, I believe, except where the long and short haul clause is involved. In my judgment it is this local discrimination which is the cause of much of the irritation throughout the country. The jobbers in one town want to go into the territory as against the jobbers of another, and in many cases it is not the farmers, the great mass of the people, who are involved. Yet there are cases, just like the one or two I have mentioned, where a remedy would seem to be necessary. If, now, you merely gave the Commission explicitly the power to order the discontinuance of a rate, would not that put it up to the railroads to name something which would be fairer? Suppose you order the discontinuance of a rate at 50 cents, and they put in a rate of 49½ cents. Then the Commission could come in again and say, "You have got to try it again." But I think that is not conceivable. In the main, the relations between the railroads and the Commission, as I interpret them, have been rather improving than otherwise.

I see to-day that the contest over differentials on this enormous traffic to the seaboard is referred to them for arbitration. I see that three railroads, running from Memphis into Arkansas, have recently voluntarily referred a contest to the Interstate Commerce Commission for arbitration.

I do not believe they would do that if they did not have some confidence in that body. And I, for one, would like to add here, explicitly and in some detail, my statement that the record of the Interstate Commerce Commission, as a whole, has been good. I do not like to hear the statements that have been made here, and I believe they are made for partisan purposes, that this Commission has been altogether inefficient; that because 95 per cent of its decisions have been upset it is not worth being left with power. In the main it has grown in the confidence of railroad men, or I do not believe they would have referred two important disputes, like those I have mentioned, to the Commission for arbitration within the past two months, and have agreed to accept the decision of that Commission, or practically that; I do not know that that was it absolutely.

Senator FORAKER. I do not understand that anybody, representing any railroad, has made any such statement about the Interstate Commerce Commission as you mention. There was one witness who said that he regarded the Commission as entirely inefficient, and that we would have been better if we had never had it.

Mr. RIPLEY. May I quote, sir, from that printed brief filed by Messrs. Spencer and Willcox?

The CHAIRMAN. I do not think that is before us.

Mr. RIPLEY. It is printed on the cover that it was submitted to this committee.

The CHAIRMAN. It has been sent to us, but it has not been accepted.

Mr. RIPLEY. It has been sent to all the political economists of the country and to most of the colleges and students and a large number of others.

Senator NEWLANDS. I see no reason why you should not quote from it.

Mr. RIPLEY. It is mild enough. It recites that—

> Since 1887 43 suits have been instituted to enforce final orders of the Commission as to rates. The net result of the action of the courts shows 2 affirmances and 30 reverses.

It continues, later:

> As over 90 per cent of the Commission's orders as to rates which have gone before the courts have been overruled, it is impossible to foretell what havoc would follow the exercise of such powers.

The implication is that this body has not fairly and dispassionately passed upon the cases.

Senator NEWLANDS. How large a proportion of the cases decided by the Commission have been taken to the courts?

Mr. RIPLEY. I can not tell you that, sir.

Senator NEWLANDS. It is a very small proportion, is it not?

Mr. RIPLEY. Very small.

Senator NEWLANDS. So that if you had the number of cases in which their decision was upheld compared to the number in which they were reversed in the courts you would have a very large preponderance in favor of the wisdom of the Interstate Commerce Commission, would you *not?*

Mr. RIPLEY. I think you would. Besides that, the acceptance of many of its decisions by the railroads without contest would show the same thing.

I should like to demonstrate the efficiency of this Commission in another way. An exceedingly good outline of the contested cases in the courts has been made by Mr. Newcomb, who is present here this morning, and I have been analyzing the number of those cases that have gone to the Supreme Court for final judgment. The great majority of those have been upset. Since 1887 sixteen such decisions have been rendered on cases appealed for enforcement by the Interstate Commerce Commission. Fifteen of these have been decided in favor of the carriers, while only one sustained in part the contention of the Commission. At first sight this record appears to sustain the contention of the advocates of the railways in condemning the attempt at governmental railway regulation. A commission so persistently on the wrong side of a great question as this record indicates would surely invite distrust. But there are two answers to this contention which merit consideration before a final judgment. One of these is that almost all of these court cases have involved not so much the demonstration of the application of the law to economic abuses as the purely judicial interpretation of the law itself.

They have turned on questions of law, and in many cases the whole bunch of these decisions have gone en bloc, together. For instance, the Troy Case was first started in the courts, and while it ran on for a number of years a number of other Supreme Court decisions were reached on the assumption by the Commission that their first pronouncement would be upheld. Of course, when the final one is overset it oversets the whole list, when, as a matter of fact, all those cases bunched together really involved one issue, and that in this case was the long and short haul clause. In another class of these cases it all turned on the power to prescribe rates, and one reversal of the decision of the Commission in respect to the power to prescribe rates would cover a lot of others. So that when you say that 15 out of 16 were decided against the Commission, it seems to me rather unfair to say that inefficiency is thereby demonstrated.

Another way to show this same thing is by considering the number of these cases which have been upheld with unanimity by the decisions as they come up through the circuit court, the circuit court of appeals, and the Supreme Court. In 8 of these 16 cases which went to the Supreme Court the decisions in the lower Federal courts failed of agreement with the final decree of the Supreme Court.

In the cartage case, involving the legality of a railway giving one shipper free cartage of goods to a railway station as an inducement to ship over its line, while withholding the privilege from another, the Commission was sustained in the circuit court and reversed in the two higher tribunals. In other instances, like the Social Circle Case, turning upon the discrimination in freight rates against small towns in favor of large competitive centers, the first court ruled adversely, while the circuit court of appeals and the Supreme Court sustained the Commission in part.

Or yet, again, as in the Chattanooga Case, wherein that city complained against a higher freight rate from New York than the rival city of Nashville enjoyed, although the goods for Nashville passed *through* Chattanooga and were hauled 151 miles farther, both lower

tribunals sustained the Commission, only to be finally overruled by the Supreme Court. I believe that Chattanooga Case, after it was decided, came up in another form, and one of the lower courts still insisted on upholding its ruling.

My point is that where the Commission can find itself in such good company in a great many cases where there is a most delicate and nice issue involved, it ought not to be condemned for that reason.

There is another objection to conferring this power, which is that it will interfere with the elasticity of railroad rates. The claim is sound as to elasticity, quick adaptation to commercial needs, and our railway system is the finest in the world in that respect. When a man like Mr. Bird began this work of feeling the pulse of the community and adjusting, or certainly tempering, the wind to the shorn lamb, you appreciate that the elasticity of rates is a good thing and an absolutely essential one.

But it is not the whole thing. You do not want too much elasticity, and there are many rates which, in spite of changes in commercial conditions, have not been changed for thirty years. The rate on cotton from Memphis to New York has been 55½ cents within the memory of man, and there is not a commodity fluctuates more from one season to another than cotton.

Senator FORAKER. That is the rate on raw cotton?

Mr. RIPLEY. The rate on raw cotton. This changing of rates every midnight and continually modifying things has been a little overdrawn before the committee. I think you must necessarily leave a channel open to modify rates in order to meet commercial needs. But I do not see why the ordering of the discontinuance of a rate, which I have suggested, is going to interfere. Leave the railroad free to order the discontinuance and show its good faith by making its rates afterwards to conform to the order of the Commission, and nearly always the special rate will be a rate downward. Something was said the other day about a chimney down South having fallen down, and that they went to New York in order to buy good bricks. Suppose when that contractor went to the railroads, and he had been told he could have a special rate, but that it would be higher than the regular rate, is that conceivable? The elastic rate is almost always a lower rate. Merely pronounce a certain rate unjust, and leave it to the railroads to make a sound rate.

I concede that too much business on American railways may be going on these special commodity rates. I have read to you a letter that recites that from 75 to 80 per cent of the tonnage of American roads is going that way. That does not mean that it is going on the individual commodity rates, but those are the low rates which are made to get this long-arm business; but when you unduly extend your long-arm business you must assume the burden of local constituency, and that brings us back to the proposition which Senator Cullom mentioned a while ago.

One more point, Mr. Chairman, and it is this: In my professional work I have to follow the movements of Government ownership, and of the demand of the people for interference in what once might be called private business.

Knowing the constant tendency all over the world toward government ownership, I do not hesitate to say here that I do not believe

in it for this country. I look to Italy and I see that within a month they have signed contracts taking over private railways. I see Switzerland, which did that only a few years ago, embarked on that project. In France to-day, although the leases of those now privately managed roads do not expire for thirty or forty years, they are already beginning the agitation and trying to induce the Government to extend the one line in Brittany and get in shape to take over the railways when the time comes.

Do you appreciate that in India the railroads are improving? Roughly speaking, there are 20,000 miles of railroad in India—state operated or state-owned railways—of which there is no complaint.

In Australia, I believe, they have not been successful. Mr. Meyer, I believe, is right.

But I come back to my original proposition, that when some proportion of eighty-odd million people think too long about this railroad question, when they concentrate their attention upon that issue, upon that pebble in their shoe or the cinder in their eye, they will get to thinking of Government ownership as a remedy, and it is a waste of public ability to turn attention a little bit by recognizing the wisdom of a moderate, reasonable, public control.

The CHAIRMAN. I understand you to say, Mr. Ripley, that you would suggest the conferring upon the Commission of power to decide a rate too high and to set it aside, and then leave it to the railroads to make a substitute rate within a given time?

Mr. RIPLEY. That is my suggestion.

The CHAIRMAN. How many days would you say?

Mr. RIPLEY. I have not thought it over sufficiently for that. It seems to me that this committee is much wiser than I could hope to be in that case.

The CHAIRMAN. Instead of going to the Commission with a complaint that the rate is too high, and the Commission failing to settle that rate as between shipper and carrier, you would, in the interest of expedition and against delay, have the Commission go directly to the court and let the court pass upon the question, after the Commission had had a hearing and judicially determined it?

Mr. RIPLEY. The main objection to that would be that I believe in the long run a body of technical experts would get on better with the railroads than—if I may use the term—a lot of green circuit judges, men who are not trained in deciding these cases.

Senator NEWLANDS. Then your suggestion would involve putting traffic managers on the Commission instead of lawyers, would it not?

Mr. RIPLEY. I should say that a fair number of members of the Commission ought to be traffic experts—railroad men.

Senator NEWLANDS. I have always thought so.

The CHAIRMAN. You think, then, as a principal and primary element, that the railroads in all cases should fix rates, and that the power to reverse them or to correct an abuse should reside either in the Commission or in the courts?

Mr. RIPLEY. I am not prepared to answer "yes" or "no." I believe that the power to make rates ought to reside primarily in the rail ways, but I believe that ought to be subject always to efficient control, and that the only way to control that is to give authority to say when a rate is not reasonable either because it is absolutely too high, or because it is relatively too high with reference to some commodity, or be-

cause it is relatively too high with reference to some other place—you have got to have that rate passed on by somebody somewhere. It will go to the court if it is a big enough issue. So why not have a technical body which shall be continually training its mind along this line, so as to render a decision, instead of imposing that burden upon the courts? I have read most of the decisions of the Supreme Court on this subject, and as I read them it seems to me that the point of view of a judge is most remote from the point of view of a traffic manager, and it seems to me that the reasoning from the point of view of the present Interstate Commerce Commission has improved, and that they are coming nearer to the proper appreciation of the delicacy of the issues involved. I do not believe that you will have another case arise involving the legality of a maximum rate. It is going to be only in the most flagrant instances that the Commission is going to pass upon the absolute unreasonableness of a lot of rates.

The CHAIRMAN. You stated that the rates had increased in the last five years. Has this increase been more than the advance in the price of labor and materials and other commodities generally?

Mr. RIPLEY. I am unable to say. I expressed my judgment that in the main the increase had been justified, but I temper that by the further statement that the administration of the power to increase rates to this degree is at the same time a demonstration of the power to continue to increase them if they want to do so.

Senator KEAN. But they can not do it unreasonably.

Mr. RIPLEY. They might do it relatively. I do not believe there is any such power in the law as it stands to-day, nor even in the Esch-Townsend bill, and that seems to me to be a striking omission.

The CHAIRMAN. Do you favor that bill?

Mr. RIPLEY. I favor that bill as it stands, with two exceptions. First, that it proposes to give the power merely to order a discontinuance of a rate, instead of amplifying and giving the power to substitute one; and, secondly, a provision—which ought to be made either in that bill or in amending section 4 of the original act of 1887—so as to provide that the long and short haul clause shall be enforceable in some cases, and not as it is to-day, not enforceable in any case.

If I may be permitted, I would add one or two other points which I find I omitted and which have not been covered. I know it will be said that railroad pooling is an obsolete issue; that there is no need of it; and yet I can not help but cling to such a scheme in certain cases for the obviation of certain phases of this superfluous transportation, this waste in transportation to which I have called your attention; and I would illustrate what I mean by a case on the map, if I may be permitted. Suppose we had a flat, open territory like Texas and you have there some central point at which two lines of railway converge, like this, on a common center. This road running up this way is not only seeking the traffic on its own line by special rates and in other ways, but is trying to get freight from off this line to come across and down. Well, now, at the same time this road is reaching over on these cross lines and getting freight to come across here, and you have freight moving simultaneously, like this, in each case going farther than it needs, and tempted so to go by commodity or special or long distance rates.

Now, would it not be an economical advantage if they could draw a line down through the middle, just as I understand some of the jobbing associations have divided Ohio at the present time, as between Cleveland and Cincinnati, and each side agree to handle a distance, and so adjust their freight rates that they will keep out of each other's territory? Would not this possibly serve the advantage of both the roads if they could avoid this prohibition and make an agreement? And, as an instance of such an agreement, I would call your attention to what seems to me a very beneficial arrangement made here to-day, as between railroads that operated in the South. There is one line of road, coming down this side of the mountain, east, and another line going down there. They are both competing, not only to bring in food products from the North, but as population moved west more and more from the Northwest, and they were also trying, of course, to get products going out. They were both trying to get the carriage of manufactures from New England. The situation, as they found it and got these long-distance rates, gradually became such that traffic would go away round here and, for all I know, up this way. I know they had a good deal of traffic in 1876, at the time of the rate wars, and a great deal of traffic came from out here on the trunk lines at low rates and then went away up like that.

Senator CLAPP. Unless you describe the mountain range, and say east and west of it, your statement in the report will be absolutely unintelligible. "Here" and "there" do not mean anything.

Senator FORAKER. That is, it went from the West north of this range of mountains and then came down South?

Mr. RIPLEY. Yes. The case is analogous to the one I instanced before, where two lines of railroads are converging on the top of a mountain. In order that the roads on each side of the mountain might avoid invading each other's territory they divided the territory from Buffalo to Wheeling down here, and divided it again down here, and the roads west of that line agreed that they would not accept traffic from east of the dividing line in order to carry it by a circuitous route; and similarly the roads east agreed, and they made this agreement effective by an adjustment of their terms, not to reach over into the west and bring traffic by a circuitous route in the other direction.

Senator DOLLIVER. What was the date of that agreement?

Mr. RIPLEY. I am unable to give it to you, but a large amount of testimony relative to it will be found in the transcript or record of the Cincinnati Freight Bureau cases.

Senator DOLLIVER. That is the Maximum Rate Case?

Mr. RIPLEY. No. I forget the time the agreement run, but that is immaterial to my argument, and the tariffs five years ago were still adjusted to that same end, so that superfluous transportation was saved.

Senator CULLOM. Now, that description is all right enough, but what we are driving at here is to find out what sort of legislation we ought to adopt, and how can you apply that to any legislative matter?

Mr. RIPLEY. I can apply it to this, that I believe the prohibition of pooling ought to be repealed.

Senator CULLOM. You are in favor of pooling?

Mr. RIPLEY. Yes.

Senator CULLOM. That is the meaning of that description?

Mr. RIPLEY. Yes; to show you how in certain cases it may be possible by an agreement of railroads for a division of the territory to avoid a certain amount of this superfluous transportation. Concretely, I suggest that you consider the repeal of the prohibition of pooling. I believe that prohibition was a serious mistake in the original act of 1877.

Senator CULLOM. Is that all you desire to say?

Mr. RIPLEY. Yes.

Senator CULLOM. Now, if I understand the general tenor of your discussion, it is that you are in favor of giving a commission power in certain instances to make rates or to settle disputes over the question of a rate?

Mr. RIPLEY. I am.

Senator CULLOM. You are in favor of that policy as against referring everything to the courts?

Mr. RIPLEY. I am, decidedly.

Senator CULLOM. That is what I understood from your testimony. Now, in your discussion of the long and short haul question I understand you to be in favor of the long haul, but with some sort of regulation of the long haul so that in certain cases the action of the railroad might be brought under control in the exercise of its right under the long and short haul clause, if the Commission wish.

Mr. RIPLEY. I believe that a more direct remedy than exists to-day, if any exists to-day, and I believe there does not. Of course, I am not a lawyer.

Senator CULLOM. You think there is no regulation now at all?

Mr. RIPLEY. Not in respect of the long and short haul clause.

Senator CULLOM. On that score I mean. Let me ask you again—I believe I did ask you—whether there are any circumstances; whether you would pass a law, if you had the power, prohibiting the charging in any instance of a greater sum for a short haul than for a long one on the same road and in the same direction?

Mr. RIPLEY. I believe that would be disastrous if applied rigidly.

Senator CULLOM. Do you think it would be disastrous to pass a law that would permit the common carrier to charge more for carrying goods to Salt Lake than it would charge for carrying goods on beyond Salt Lake to San Francisco?

Mr. RIPLEY. The rate to San Francisco is a compelled rate—compelled by the conditions of water competition—not, perhaps, for all commodities, but only for those which are transportable by vessel—and to compel a rate to come down at all these intermediate points below San Francisco would entail an excessive hardship upon the carriers, in my judgment. That, however, does not imply an opinion that the present rates to Denver, which have been the occasion of so much complaint, and at other intermediate points, may not now be unduly high with reference to the through rate. That is a question upon which a layman without intimate knowledge of the facts can not pass. My impression, from reading the cases and opinions of the Commission and the evidence accessible, is that some of those high rates in the Rocky Mountains and the intermediate territory could be reduced substantially.

Senator CULLOM. Could be reduced?

Mr. RIPLEY. Could be reduced with reference or relatively to the Pacific coast rates.

Senator CULLOM. And you, if you had the power, would give a commission, on complaint, the right to investigate and reduce if they found it necessary?

Mr. RIPLEY. I would advocate giving them the right to investigate and declare that in their judgment the rate at Denver or Spokane or Pueblo was unduly high, and compel the railroads thereupon to discontinue that rate and make another rate. I do not believe that, in the face of public opinion, a railroad would think it wise to comply technically without yielding a substantial amount.

Senator CULLOM. Do you think public opinion is against rate making by a commission?

Mr. RIPLEY. You ask me to decide a very important question which is before this committee. My impression from travel through the country, talking with the farmer and with the small merchant, with the merchants in the small places, is that the people feel themselves helpless in the hands of the traffic manager or his representatives. They often concede that they are fairly treated, but they feel that they plead for mercy and not for justice in case of a controversy.

Senator CULLOM. In other words, you think they feel that they ought to have a commission of some body of men standing between them and the common carrier?

Mr. RIPLEY. I do. I can say to you, as I stated substantially a while ago, that a tribunal, disinterested, impartial, ought to be constituted with power to accord substantial relief, and that quickly.

Senator CULLOM. You spoke to-day of the terminal rates and charges in Chicago. I wish you would repeat that again.

Mr. RIPLEY. That reference was merely by the way, and I can not recall at the moment all the details of those cases. As I remember them, the charge had been $2, a sum afterwards considerably increased. I think the Interstate Commerce Commission held that that rate, as increased, was unreasonable.

Senator CULLOM. What was the result? Was there any appeal?

Mr. RIPLEY. I think there was a failure to comply, although I am not positive. I instanced this case before merely to show that although the general level of rates might be just, it did not preclude the occurrence of special cases which involved real hardship.

Senator CULLOM. So you don't know whether they complied with the decision of the Commission or not, do I understand?

Mr. RIPLEY. I can not state offhand. My impression is that they did not comply.

Senator CULLOM. You have said that the interstate-commerce act and its amendments make further legislation necessary in order to protect the people in their terminal charges by common carriers in these instances.

Mr. RIPLEY. It would appear that some further definition of the extent of control over terminal railroads might be necessary. Perhaps the definition that the constitution of a joint rate by a terminal railroad in connection with another carrier should especially be subject to control, to cover, I mean, the class of cases which have recently been brought to light with regard to the Atchison, Topeka and Santa Fe road, I believe.

Senator CULLOM. What do you have to say about rebates? Is there anything necessary to be done more than has been done to protect the people, the shippers, against rebates?

Mr. RIPLEY. I think not. It seems to me that that is a past issue.

Senator CULLOM. Anything in reference to unjust discriminations of various kinds?

Mr. RIPLEY. No. I think that also is in the main an issue which has been settled by the railroads themselves, and it is to their advantage——

Senator CULLOM. Just what is the matter? Are there any violations of law or wrongdoing by the common carrier that require additional legislation to protect the people in their rights?

Mr. RIPLEY. I think the most serious one at the present time concerning alleged evils is that of discrimination between localities—that is, of relative freight rates. That is true as between not only places, but commodities. I frequently hear complaints from business men that their particular product is handled unfairly in the classification sheets. For instance, a friend of mine who is a manufacturer in New Jersey of electrical insulations, complains——

Senator KEAN. Where?

Mr. RIPLEY. I can not name the town. I do not know. It is within comparatively a few miles of New York.

Senator KEAN. What is the name of the company?

Mr. RIPLEY. I can not remember the name of the company, but it is a corporation with a considerable name—that is, with quite a long name. I do not remember. The only point I wish to make is this: That in one place their commodity is classified as wrought-iron pipe and in another place it is classified as black pipe, and it confuses them. They desire to be treated uniformly in different parts of the country, and they find it difficult to secure such treatment.

Senator CULLOM. I do not know that I care to ask any further questions.

Senator KEAN. I may have one or two questions: Let us go back to the Vermont manufacturer of window sashes. Don't you think that, being a Vermont manufacturer of sashes, opportunity to sell in Detroit as well as in Boston enables him to increase his trade?

Mr. RIPLEY. Not if for every sale he makes in a territory naturally foreign to him a sale of corresponding amount is made in his own territory.

Senator KEAN. How would you limit that?

Mr. RIPLEY. I should limit it as I believe some of the industrial combinations are trying to settle that same problem.

Senator KEAN. Then you believe in combinations?

Mr. RIPLEY. I believe in some of the services that industrial combination is rendering. I consider that their existence at the present time has had, fairly or unfairly, some influence in inviting attention to corporation problems, and I would illustrate further what I mean. The United States Steel Corporation is developing a definite policy by which it shall keep goods moving out from Pittsburg. It publishes price lists based upon a price at Pittsburg, plus the freight rate, to practically every point in which it sells its goods.

Senator KEAN. Yes; but the plants in Pittsburg are not the only plants the United States Steel Corporation has.

Mr. RIPLEY. Of course not, but the price is made in the rate books which I have seen, on Pittsburg. But the point again is that they are trying to develop a policy by which each steel shipment from

Pittsburg into territory would be from Columbus into territory beyond it, and not back. That is, so that the product shall not be transported to a point and back again, but that it shall be carried out and on farther, and not doubled upon itself. It seems to me an exceedingly wise policy in the distribution of goods. It is one, I believe, adopted by other industrial combinations, and it is one I should like to see applied on the railroads in their own interests. I would ask that the Government apply this in the first instance. I might suggest that from the point of railroad economics the railroads aim to present too much long distance traffic at a rate which has to be made so low in order to get that long haul that it barely affords remuneration, and throws the burden of the fixed charges upon the local traffic. It would be better if we had less transportation in the aggregate, and if I may introduce here a calculation which I made a while ago, I would like to do so to show you the rate at which transportation is increasing in the United States.

Comparing 1889 with 1903, which was the date of the last official statistics—the last two dates for which official statistics were available—our domestic population in fourteen years increased, roughly, one-third. The miles of railway lines operated increased about the same, and yet the freight service, measured by ton mileage, increased fifteen times as fast as the population. Now, the warning that I have here to the railway manager, in his own interest, is that that increase in amount of ton mileage, fifteen times as fast as population, may be in part due to an excess of this long-distance business. It might be concentrated and turned in on itself, if you please, by the application of the device of pooling, if we allow it by law.

Senator KEAN. Then the whole remedy is pooling, for one thing, and rate making or rate adjusting by the Interstate Commerce Commission?

Mr. RIPLEY. The power to declare a given rate on complaint unreasonable.

Senator KEAN. You spoke about a decision of the Supreme Court of the United States. Now, as I understand the cattle terminal case, the Commission held an increased rate to be unreasonable.

Mr. RIPLEY. As I remember it; yes.

Senator KEAN. And the common carrier refused to comply with that.

Mr. RIPLEY. I am not certain about that.

Senator KEAN. That was the case. The case went to the court, from the circuit court to the court of appeals, and from there to the Supreme Court of the United States, and all those courts held that the Commission was wrong on the facts. You stated that the Supreme Court determined the case on questions of law and not on questions of fact. I think if you will read that case carefully you will find that it was determined on facts.

Mr. RIPLEY. May I say that case was introduced merely to illustrate a possible instance in which rates might be increased unduly in a single case, and I think I took care not to assume responsibility for the history of the case as a whole.

Senator KEAN. And I think if you will go further you will find that the Supreme Court sent the case back to the Commission to make an order according to the facts, if they chose to do so. The Com-

mission has since had the case before it for more than three years without making any further order. I think that is all.

Senator FORAKER. Professor, you are connected with Harvard University?

Mr. RIPLEY. I am.

Senator FORAKER. You have a professorship?

Mr. RIPLEY. I am professor of economics and chairman of the department of economics.

Senator FORAKER. How long have you held that position?

Mr. RIPLEY. Three years or more, prior to which time I was professor of economics for nine years at the Massachusetts Institute of Technology at Boston.

Senator FORAKER. So that you have given a great deal of study to this general subject.

Mr. RIPLEY. I have been interested in it as an outsider can be. No man can study railroad rates from the outside.

Senator FORAKER. You have had no practical experience as a shipper?

Mr. RIPLEY. Not at all. The only practical experience has been theoretical, so to speak, as the expert agent of the Industrial Commission in 1900.

Senator FORAKER. You were connected with the Industrial Commission?

Mr. RIPLEY. I was.

Senator FORAKER. In what way?

Mr. RIPLEY. I was officially entitled "expert agent on transportation." There were two or three of us. Professor Jenks, of Cornell, was intrusted with the summoning of witnesses and their examination and the preparation of the report on trusts. That same work respecting railroads was given to me during the second half of the life of the Commission.

Senator FORAKER. I am not sure that I understand your testimony in all its details, but I will recite to you what I understand you to have testified to in effect and let you correct me if I am in error. I understand you to say that so far as the rates absolute are concerned, to use that term, there is nothing that is reasonably unreasonable, looking at the average of rates.

Mr. RIPLEY. Not at the present time.

Senator FORAKER. There have been some increases, and some of them, you said, have been greater increases than were justified, perhaps, but the average is reasonable?

Mr. RIPLEY. The average is reasonable, and as to the reasonableness of some of those particular increases I am not a judge. My impression is that they have been all as much as they ought to be in individual cases, and that the average has not been greater than appeared right.

Senator FORAKER. I understand that the records show that the Interstate Commerce Commission, during this period of five years, in which time you sav these advances have been made, have condemned only two of these advance rates. That would seem to confirm your own judgment?

Mr. RIPLEY. It would.

Senator FORAKER. That upon the whole the average is, perhaps, fair?

Mr. RIPLEY. But that does not exclude the possibility of still further increases in the future.

Senator FORAKER. No. I understand you think something ought to be done to keep them from going on increasing hereafter without limitation, because they might increase further than would be justifiable.

Mr. RIPLEY. Because they might.

Senator FORAKER. I understood you to say, however, at the same time, or on some other occasion, that it is never to the interest of the railroad to increase its rates unduly, because that prejudices the community it serves, and that is opposed to the great interests of the railways.

Mr. RIPLEY. I said that was true in general, but I can conceive the exceptional case in which quite the contrary might be true.

Senator FORAKER. Yes; there might be exceptions to almost any rule, I suppose.

Mr. RIPLEY. For instance, if I may make a suggestion and instance a railroad which is permanently and continually in the hands of one set of managers, that it is allied with the territory which it serves, but a railroad which is speculatively managed and which may be seized upon as the Louisville and Nashville was seized upon by a set of speculative brigands some two or three years ago, who took that road for no other purpose than, as they threatened, to seize the country, increase the freight rates, and sell at a profit—in that case I say that the people of that territory are absolutely at the mercy of a railroad which has no unity of interest with it. That is always possible.

Senator FORAKER. To whom do you refer when you speak of a set of brigands?

Mr. RIPLEY. I refer to the gentlemen who obtained the control of the Louisville and Nashville from, I presume, the Belmonts, who controlled it.

Senator FORAKER. Was that Mr. Gates?

Mr. RIPLEY. It may have been. I do not know of my own knowledge.

Senator FORAKER. I do not care about names. I do not ask you to embarrass you. If there is any objection, the name can go out.

Mr. RIPLEY. I do not know that it was Mr. Gates.

Senator FORAKER. Were the rates put up after that transaction?

Mr. RIPLEY. They were not, because the road was taken back again at a pretty good price within a very short time.

Senator FORAKER. There was no general advance of rates, such as you suggest might have been, and there could not have been, could there, without destroying equilibrium of the whole schedule of rates throughout the country where the road operated?

Mr. RIPLEY. Yes; I think I can go back over railroad history, if I were given time to refer to cases in my notes, and I could put my finger on instances where railroads had been speculatively managed in order to make a record. Then there is another phase of this question——

Senator FORAKER. I have only ten minutes in which to ask you questions, and I desire to have answers to the questions I want to ask.

Now, as to rebates, I understand you to say that they are practically provided for by the law as it now stands, so that I will pass that by. I do not know that I understand exactly what your position is as to the long and short haul, but if I have not misunderstood you, you are of opinion that that is operated effectively in perhaps 5 per cent of the cases.

Mr. RIPLEY. I would not like to specify just 5 per cent.

Senator FORAKER. Well, didn't you specify?

Mr. RIPLEY. I gave that to illustrate that in a small proportion of cases the long and short haul clause could and should be applied profitably—or, no, that it ought to be applied in the majority of cases; that in a small proportion of cases the contrary would be the case.

Senator FORAKER. They work a hardship.

Mr. RIPLEY. Yes.

Senator FORAKER. In other words, the long and short haul clause of the original interstate-commerce law, as construed by the courts, has worked satisfactorily in 95 per cent of the cases—and this is only an estimate—and in 5 per cent of them it perhaps does not work satisfactorily; and you gave some illustrations.

Mr. RIPLEY. Yes.

Senator FORAKER. Well, that was the effect of your statement. You gave some illustrations, one the case of selling rakes, manufactured in Massachusetts, in Iowa.

Mr. RIPLEY. Yes.

Senator FORAKER. Your criticism there was that there was a waste of service.

Mr. RIPLEY. Yes.

Senator FORAKER. Is it not true that when rakes manufactured in one part of the country are transported for sale a long distance, as in this case, there is some reason at the bottom of it always?

Mr. RIPLEY. I suppose there is in many cases.

Senator FORAKER. In this case it has been suggested that they had to take these rakes, having been manufactured by the convicts of the Iowa penitentiary, all the way to Massachusetts to find a community broad minded enough to buy convict-made goods. May not that fact be at the bottom of this long haul of freight?

Mr. RIPLEY. Wherever a long haul creates new business, where it makes two blades of grass grow where none grew before, it is an unalloyed advantage, but where it merely leads to retaliation it is not.

Senator FORAKER. In the case we had when Governor Cummins was on the stand the other day, of butter and eggs produced in Iowa being shipped to New York City and sold there in competition with the butter and eggs of New England, would you not regard that as something beneficial to humanity and to the general development of the country?

Mr. RIPLEY. I would.

Senator FORAKER. Do you favor the construction of the statute that permits that in a case of that kind?

Mr. RIPLEY. I would; certainly.

Senator FORAKER. You gave us as another illustration the case of cotton being hauled from Memphis and that vicinity to the mills of New England at 55 cents.

Mr. RIPLEY. Yes; 55½ cents, I think.

Senator FORAKER. Ten cents of that is for compression, I am told, so that only 45½ cents is for railroad rates. You thought that was a waste of service to take that cotton all the way around there when they might have taken it across the country by the Southern or some other railroad—I do not know what road would take it—to the North Carolina cotton factories and mills.

Mr. RIPLEY. I think normally the bulk of the freight ought to go by the most direct route.

Senator FORAKER. Then you would have all the cotton mills down in North and South Carolina.

Mr. RIPLEY. I would be sorry to see that.

Senator FORAKER. Yes; I was about to ask you whether you thought it was of advantage to the State of Massachusetts, where you teach political economy, to have these cotton mills supplied with the raw product from the South.

Mr. RIPLEY. It does not help us in Massachusetts to have the cotton go to the southern mills. Nevertheless I tried to answer the question in a general broad way.

Senator FORAKER. I am putting it in a way so that you will appreciate what your remarks signify.

Mr. RIPLEY. Yes.

Senator FORAKER. The railroad that has the cotton brought to it at Memphis must meet the competition that the railroads create for the transportation of cotton to the mills that they supply—that is, the Illinois Central and Louisville and Nashville must either meet the competition and haul the raw cotton to New England to be manufactured in New England or let it all go across the country to the North and South Carolina mills, over a railroad which can give a lower rate because of the shorter distance?

Mr. RIPLEY. Yes.

Senator FORAKER. Or else they must meet that lower rate, must they not?

Mr. RIPLEY. Yes; but my answer would be that we have made two blades of grass grow where one grew before by having that cotton shipped into Massachusetts. They are raising those blades of grass down South now, but the Massachusetts mills are suffering.

Senator FORAKER. If you were running a railroad from Memphis north by way of Louisville and Cincinnati and east to New England and had a lot of cotton offered to you, if you would take it at as low a rate as a competing road would take it to the North Carolina mills, what would you do? Meet the rate or let the North Carolina mills have it?

Mr. RIPLEY. I should like to get together with the other roads and agree with those other roads that they would take the freight naturally tributary to them and in turn would let me have the freight tributary to myself. But they can not do that under the law to-day. I do not know that they want the privilege of pooling, but I would like to see them have it.

Senator FORAKER. But they could not make that kind of an agreement.

Mr. RIPLEY. Not under the present law.

Senator FORAKER. Do you recommend that we repeal that provision of the law?

Mr. RIPLEY. I do.

Senator FORAKER. And allow them to make traffic arrangements?

Mr. RIPLEY. Yes, sir.

Senator FORAKER. Such as were involved in the Trans-Missouri Case?

Mr. RIPLEY. Yes; but only if you simultaneously give this power to the Interstate Commerce Commission to supervise.

Senator FORAKER. You think the two necessarily go together?

Mr. RIPLEY. I think they do.

Senator FORAKER. You would have these agreements submitted to the Commission to see whether or not they were reasonable?

Mr. RIPLEY. I would, and made effective. I would go so far as to make them enforceable by law thereafter.

Senator FORAKER. Well, now, you told us you did not know how discrimination against a locality could be corrected under the present law, referring in that connection to the Elkins law, and the point you made was that under the present law only discriminations against localities and on account of commodities are prohibited and can be enjoined, which are forbidden.

Mr. RIPLEY. Only those things can be enjoined.

Senator FORAKER. And none are forbidden except where the conditions are the same. If the conditions are not substantially similar, the court may take unlike conditions into consideration and sustain the rate which has been made.

Mr. RIPLEY. I am not a lawyer, and I can not say with certainty that that is the case, but I believe it to be true from the cases that I have studied.

Senator FORAKER. Well, the law as it now stands has been construed to mean that the courts will uphold what is reasonable in the matter of discrimination. Would you have us be so unreasonable as to prohibit what is reasonable?

Mr. RIPLEY. No; my contention would be that the law at present prohibits a remedy in those cases where the rate is unreasonable.

Senator FORAKER. I do not understand.

Mr. RIPLEY. My contention is that the state of the law to-day excludes a remedy where at the more distant point there appears to be a discrimination as against intermediate points. That, however, is a question of law which ought to be passed upon by a lawyer.

Senator FORAKER. Don't you think it is safe to leave a question of that kind to the courts?

Mr. RIPLEY. I think in any event it is going to the courts in all important cases.

Senator FORAKER. That is what I was going to ask you next, if it must not go there. Now, what is the objection to having it go there immediately?

Mr. RIPLEY. Because, in the first place, I think that a commission rightly constituted, with a goodly representation of traffic men on it; not lawyers; not superseded politicians; not men who are unqualified, if you please; but men fitted for the place——

Senator DOLLIVER. What kind of politicians?

Mr. RIPLEY. "Superseded" was the word I used.

Senator DOLLIVER. I thought you said "seedy."

Mr. RIPLEY. No; I beg your pardon, but I am not in any sense prejudicing the present Commisison in that way.

Senator DOLLIVER. The phrase struck me as being very picturesque.

Senator FORAKER. How many members do you think a commission should have to enable it to do all this business. Do you think five, or seven, or nine, or ten, sitting here in Washington, could do all this work?

Mr. RIPLEY. Five or seven. I can not share the apprehension that an avalanche of cases is going to come down on the Commission.

Senator FORAKER. But you told us that you could not change one rate without destroying the equilibrium of schedules.

Mr. RIPLEY. I did not mean to say that. I do not believe it in a good many cases.

Senator FORAKER. Well, I think you did qualify it by saying there would be exceptions probably to that. But I understood you to say, in the course of your general statement, that that would be the effect, that rates interlaced each other, and rates are related to each other, and dependent upon each other.

Mr. RIPLEY. The greatest complaints are over local rates—intermediate rates. A great many of those intermediate rates, it seems to me, could be modified, especially at points where there is no competition. Of course, it might effect a remedy, but in a good many other cases I do not believe those intermediate rates could be changed. There are a great many things which the people believe are evils to-day which can not be remedied. Just so long as the Southern States are shipping out a greater volume of bulky products than they ship in as merchandise, the freight rate out of the South is going to be higher than it is going in. That I find to be a most fruitful source of complaint from the South.

Senator FORAKER. I understand you to say that, so far as rates and rebates are concerned, generally speaking, you have no complaint to make, but that your complaint is confined to discriminations between localities and commodities, including terminal charges and elevator charges and switching charges, etc.

Mr. RIPLEY. And future possible absolute freight rates.

Senator FORAKER. You think there is danger of the railroads advancing rates?

Mr. RIPLEY. I do not know that there is any danger; there is a possibility.

Senator FORAKER. Is it not true that there has been, with the exception of the advances to which you have made reference during very recent years, a constant decline in the rates that have been charged?

Mr. RIPLEY. Down to 1900; yes. Since then a reversal has taken place, so widespread and so successful, that it makes one question not perhaps whether rates are going to keep on increasing, but whether they are ever going to begin to go down a little bit, as improvements come in transportation.

Senator FORAKER. There has not been any increase since then according to your statement, except that which you think was called for by an increase in wages and materials, etc.

Mr. RIPLEY. Up to the present time?

Senator FORAKER. Yes.

Mr. RIPLEY. Yes.

Senator FORAKER. So that all this has come about without any

active interposition of law as to the making of the rates. The railroads have been controlled to make rates, and is it not true that there has been a constant pressure on the rates from shippers all over the country to reduce rates, and from localities to reduce rates?

Mr. RIPLEY. Yes; and as long as you had unrestrained competition that would be true, but as the railroads got together, and as consolidation progresses—and I like to see the consolidations come along, but at the same time along with it there is a remedy which was formerly open to the shipper to go from this road to that which is now closed, and I am glad it is closed; but at the same time——

Senator FORAKER. Is it not true that the chief competition comes from localities and that it is as keen to-day as it ever was, if not more keen?

Mr. RIPLEY. It is, and I hope it will continue so.

Senator FORAKER. So that we would seem to have in that fact alone a moral force constantly in operation that was working to prevent the realization of that which you apprehend?

Mr. RIPLEY. In general; yes; in particular, yes and no; and it is to meet these particular cases that I ask your attention to some revision of the law to afford a remedy.

Senator FORAKER. I think that is all.

Senator DOLLIVER. Professor Ripley, you spoke of empowering the Interstate Commerce Commission to answer these complaints by simply declaring that a given rate ought to be suspended because unjust and unreasonable. Do you regard that as a full remedy for the complaint in most cases?

Mr. RIPLEY. Not theoretically, but probably in practice.

Senator DOLLIVER. Is not that exactly the part that the Interstate Commerce Commission has?

Mr. RIPLEY. I think it has under the Elkins law, perhaps with this exception, that it does not apply to those cases of local discrimination which are so frequent and which constitute the bulk of the complaints at the present time.

Senator DOLLIVER. But they have always exercised, as I have understood, the power to condemn a rate as unreasonable.

Mr. RIPLEY. Yes; but they have not been able to do it. They have had a good deal of friction and difficulty about doing it in securing the enforcement.

Senator DOLLIVER. Exactly. But I understood you to say that if they had that power and exercised it it would be generally acquiesced in and respected by the railroads, and what I call your attention to is the complaint, which, I understand, is made by the Interstate Commerce Commission itself, that the exercise of that power is evaded for the reason that the roads would receive it nominally by simply insignificant changes in their rates, which effectually would nullify and paralyze the exercise of that power.

Mr. RIPLEY. That has been constantly stated. I never have seen an instance of it. There may be instances.

Senator DOLLIVER. I believe Mr. Prouty has stated that in several public addresses. Whether it is in the reports or not, I am not prepared to say.

Mr. RIPLEY. I can not recall a concrete instance of evasion in that way.

Senator DOLLIVER. If they have the power to condemn a rate and to repeat that condemnation as rapidly as the rate develops which is subject to their condemnation, does not that give them a pretty effective control over the rate question?

Mr. RIPLEY. It does, if you give it all up and down the line for all classes of cases; but suppose, as at present, it is merely enforced by the court, you have the control of these cases given to the courts instead of to the Commission. What I claim is more desirable is that a commission should pass upon the case at first, and then that it should go immediately, by injunction, to the courts, and then leave the judge of the court to render a decision.

Senator DOLLIVER. Have you meditated upon the difficulties that arise by so framing our law as to give the Commission the control of a large rate area in one case and subject to one order of the Commission?

Mr. RIPLEY. Yes; I have read the claims constantly made that the immediate effect of giving this power would be to produce an avalanche of questions, which could not be handled by a hundred or several hundred men. I do not believe that.

Senator DOLLIVER. You illustrated a moment ago with a map the rate questions involved in what is called the Maximum Rate Case—the case in which the Supreme Court, after a full hearing, declared that the Interstate Commerce Commission had not been given the power to fix rates, to take effect for the future. Now, there was a case that arose between two towns—Cincinnati and New York, primarily.

Mr. RIPLEY. Yes.

Senator DOLLIVER. Chicago entered the case and Boston entered it, and one after another twenty or thirty railroads got into it, on one side or the other. The case dragged along for several years, and finally the Commission made an order—and I have here a map of the country that was covered by that order, and I would like you to look at it—an accurate statement of the number of cities and towns that were involved in that order.

Mr. RIPLEY. Yes.

Senator DOLLIVER. The order, according to the testimony that we have had here, upset a great many more rates than it settled. One witness testified that it brought cities that were at perfect harmony, like Atlanta and Rome, Ga., into the case without a hearing, and complaint was made that it destroyed the equilibrium that had prevailed for many years. Cincinnati seemed to get out of the decision what it wanted as against New York, but lost by the decision in favor of Chicago that which took away from them more than they gained in the decision against New York. Now, what I want to get at is whether such a power as was exercised in that case is consistent with sound economy in the management of these railroads of ours?

Mr. RIPLEY. I am not fully convinced, in the first place, that it was absolutely essential to upset all these rates shown on this map, or alleged to have been upset. It is very easy for a traffic manager to show an interlacing of rates and to make out a case that to change this rate changes another. They are interrelated in a great many cases; but it occurs to me that sometimes——

Senator DOLLIVER. Would you regard human wisdom, or, I would say, the wisdom of an Interstate Commerce Commission, for example, as adequate to such a problem as was involved there?

Mr. RIPLEY. I certainly should, properly constituted of men who were competent to view the issue in a large way.

Senator DOLLIVER. What would you say of narrowing the control of the Interstate Commerce Commission to the consideration of the question of exorbitant rates, leaving out this competition of markets and regions of country, which might involve commercial rivalry, or rivalry of a sectional character, very damaging to our political system—leaving that out altogether and confining the Commission to a settlement of those controversies which arise between shippers and the railroads as to the reasonableness of the rate in a given case?

Mr. RIPLEY. I think that the Commission complain at the present time of just those relative rates. That is the difficulty. You will not remedy the very thing of which the people complain. The ultimate responsibility of these things is not to rest with the Commission whatever you do; the case is going to the courts.

Senator DOLLIVER. But if it goes to the Commission first it then goes to the courts upon only one leg, namely, whether the thing is confiscatory of property rights. Now, we have already tried to establish a scheme to adjudicate those controversies between communities which arise on account of discriminations. We had that in the Elkins law. If a community complains that it is discriminated against, you make that showing to the Interstate Commerce Commission, and that matter now can be taken into court in a very summary way, and a decision and judgment of the court after a full hearing had on it. Would you regard that as any remedy for such a discrimination?

Mr. RIPLEY. I may misunderstand you, but as I understand the latest phase of the law—and I am not a lawyer, but as I read it—if the court finds that there is competition of markets at the more distant point, that makes the whole situation reasonable.

Senator DOLLIVER. If they find that there is such competition of railroads or water or pressure of competing markets as to make the discrimination reasonable, the court will hold that it is reasonable. Would anybody hold that it was unreasonable under such circumstances? In other words, would we expect to create any tribunal which would disturb that?

Mr. RIPLEY. I do not quite see the distinction you make there.

Senator DOLLIVER. Now, the Supreme Court certainly would not hold that the long-distance rate was reasonable unless the facts showed that it was compelled by a water competition or by railroad competition or by the pressure of the markets at the terminal points?

Mr. RIPLEY. I think that will remain for the Supreme Court to define more clearly than it has yet. They have stated that the competition in markets or railroads, in the Alabama Midland decision, constituted the similarity of circumstances and conditions which granted exemption from the long and short haul clause.

Senator DOLLIVER. If we amend that law that no exemption be granted unless it is shown that this competition of water or railroads or pressure of markets was such as to compel the discrimination, that would cover the case, would it not?

Mr. RIPLEY. I do not understand what you mean by "could compel the discrimination." You are compelled to do a certain thing if you want to get a certain piece of business.

Senator DOLLIVER. Yes. You spoke a few moments ago of the

transcontinental railway rate being "compelled" by the water rate from New York.

Mr. RIPLEY. Yes; that is the technical phrase, as I understand it. They speak of a "compelled rate."

Senator DOLLIVER. That would be just exactly the same, or similar at least, if the compulsion was of that moral character arising out of the competition with some other railroad with the shorter haul distance, or out of market necessities.

Mr. RIPLEY. Yes; but as it works out in practice—for instance, in the Southern States I was told by one of the traffic managers of the Central of Georgia Railroad, Mr. Hinton, I believe at that time, in 1900, that the railroads in the Southern States can go into a territory, put their fingers on a certain place, and constitute that a basing point, and say there is competition at that point, and having so defined it they secure exemption from the long and short haul clause.

put their fingers on a certain place and constitute that a basing point, commerce act would you suggest?

Mr. RIPLEY. I would suggest amending the law so that we might return to the condition which prevailed before the Alabama Midland decision. The Alabama Midland decision held that the existence of competition at the more distant points created dissimilarity. I would so amend the law——

Senator DOLLIVER. Just phrase it a little more completely than that.

Mr. RIPLEY. It is difficult to do that without the language of the clause here. I think I could do that in a short time, but to do it here without the text is difficult.

Senator DOLLIVER. I recognize, as you do, that the great bulk of the complaints that have agitated the public mind arise from these irritations about local rates.

Mr. RIPLEY. Yes.

Senator DOLLIVER. When communities compare themselves with each other.

Mr. RIPLEY. Yes.

Senator DOLLIVER. I believe you are right in suggesting that if we can cure that we would have taken a long step toward peace on this question.

Mr. RIPLEY. You can not correct all of them. A great many of these complaints will never be settled, because the conditions are against the places, but some of them, I believe, can be remedied.

Senator DOLLIVER. I would be obliged to you if you would prepare a brief statement of the changes you would suggest in the long and short haul section of the interstate-commerce act.

Mr. RIPLEY. To be inserted in my final revised testimony?

Senator DOLLIVER. Yes.

Senator CLAPP. Professor Ripley, the real issue here is, first, what, if any, legislation could be enacted? We happen to deal with the question of legislation. Incidental to that, of course, would be the inquiry as to what the existing law was and what constitutional limitations there might be proposed to legislation. Now, are you aware that to-day, under the law, where the discrimination complained of is that two rates have been put in effect, one of which amounts to a discrimination, that that difference, being the basis of discrimination, may be reached by judicial process?

Mr. RIPLEY. Was that in the Wichita cases?

Senator CLAPP. No; that is the Missouri Pacific Case.

Mr. RIPLEY. That involves rates.

Senator CLAPP. Yes; 189 U. S. Now, so far as the question of rates is concerned, that would leave unprovided for, from your standpoint, the question of a complaint based upon the theory that the rate per se was unreasonable. I would like to know, first, just what provision you would incorporate in the law to meet that case. I understood you before we had our recess that your idea was that the shorter, more concise, and perhaps more complete remedy would be to give the Commission power in the first instance to effectively, for the time being, abate the rate complained of.

Mr. RIPLEY. That was my suggestion.

Senator CLAPP. And yet necessarily to put in effect with the same local force another rate.

Mr. RIPLEY. It was.

Senator CLAPP. Now, in regard to the long and short haul clause of the law, you illustrated a case, I think, of Detroit and Vermont furnishing windows and doors and sashes to Boston.

Mr. RIPLEY. Yes.

Senator CLAPP. You think it would be well if Vermont furnished about 75 per cent to Boston?

Mr. RIPLEY. Call it the majority—call it the larger part.

Senator CLAPP. Well, you put it at 75 per cent.

Mr. RIPLEY. Yes.

Senator CLAPP. Did you have in mind any change in the law which would work out that result?

Mr. RIPLEY. Nothing, except that the law should give greater effect to the long and short haul principle than the practice as the law is now interpreted does give—not the adoption of a distance rate, no rigid prohibition of the lower rate at long distance point.

Senator CLAPP. You would still retain the long and short haul prohibition with the exception to try and make it elastic?

Mr. RIPLEY. Yes, sir.

Senator CLAPP. At one extreme of this question of the exception to the long and short haul clause the question would arise whether the fact that the long haul being less than the short haul would of itself be evidence that the short haul was unreasonable.

Mr. RIPLEY. Either the long haul is unreasonable or the short haul is.

Senator CLAPP. Well, could there be any elasticity if the fact that the long haul was less than the short haul constituted proof in itself that the short haul was unreasonable.

Mr. RIPLEY. You might as well adopt Senator Cullom's suggestion and absolutely prohibit the lower change.

Senator CLAPP. Exactly. Then you would not make the fact that the long haul was less than the short haul evidence in itself that the short haul was unreasonable?

Mr. RIPLEY. No; I should think not.

Senator CLAPP. If that construction was placed on the law, that would leave room for elasticity at that end.

Mr. RIPLEY. I should think so.

Senator CLAPP. Now, in view of your promise to submit your views as to the exact wording of the law, I commend your attention to the

case of Interstate Commerce Commission *v.* Louisville (190 U. S.), where the court covers that phase of the question by holding that the fact that the long haul is less than the short haul is not evidence in itself that the short haul is unreasonable, or, in other words, it leaves that end of the inquiry elastic. Now, I understood you this morning to hold to the view that the courts had held that competition in itself constituted an exception to the long and short haul prohibition.

Mr. RIPLEY. That was the gist of the Alabama Midland decision, as I understand it.

Senator CLAPP. If that was not so, if over and beyond the fact that the point was a competitive point it was still a subject of inquiry by the Commission and the court as to whether that ought to constitute an exception, that would find your elasticity at the other end of this inquiry, would it not?

Mr. RIPLEY. As far as I grasp your question on the spot, yes.

Senator CLAPP. Then, in framing your question I would call your attention to Louisville and Nashville Railway *v.* Helmer (175 U. S., 648), where the court say that the competition relied upon be not artificial or merely conjectural, but material and substantial, thereby operating on the question of traffic rate making, the right in every event to be only enjoyed with a due regard to the interest of the public after giving full weight to the benefits to be conferred on the places from whence the traffic moves as well as those to be derived by the locality to which it is to be delivered.

Mr. RIPLEY. You ask me to frame an amendment?

Senator CLAPP. I think you will be satisfied that you could not from a more elastic law than the one we have. I call your attention to Interstate Commerce Commission *v.* Alabama Midland Railway (162 U. S., 144):

> The mere fact of competition, no matter what its character or extent, does not necessarily relieve the carrier from the restraints of the third and fourth sections, but these sections are not so stringent and imperative as to exclude in all cases the matter of competition.

There they say in the same breath that the fact of competition does not relieve the carrier from the prohibition, nor is the law so stringent but what the exception may apply in the case of competition.

> In determining the question of undue or unreasonable preference or advantage of what are substantially similar circumstances and conditions, the competition may in some cases be such as having due regard to the interests of the public and of the carrier ought justly to have effect upon the rates, and in such cases there is no absolute rule which prevents the Commission or the courts from taking that matter into consideration.

Now, I submit to you after the examination of those three cases whether you could prepare a law which, recognizing the broad principles of an exception to a long and short haul prohibition, could be more elastic or leave more room for the Commission and the courts, and yet mean anything, than the present law. I think that is all.

Senator NEWLANDS. Professor Ripley, do you believe that it would be wise to have any provisions regarding a check upon overcapitalization of railways?

Mr. RIPLEY. I should like to see if it were possible, and I hope to see some day, a regulation of railroad corporations somewhat like that

which we have in Massachusetts concerning finance. I should like to see a governmental body which should publicly hear and publicly pass upon questions of the issue of securities. I believe that our regulations of railways in Massachusetts has been salutary in every respect, and I do not see to-day in Massachusetts that we have this dissatisfaction with the railroads that comes from other parts of the country. The great advantage of having a really efficient regulation is that the people can find the Government and the railroads at peace. We have had it longer and better in Massachusetts than in any other State, and there is not any demand that comes up here to this city at the present time against the railroads.

Senator NEWLANDS. You feel that regulation both as to capitalization and as to the operation of railways has been more efficient in Massachusetts than in any other State?

Mr. RIPLEY. A man is always proud of his own State.

Senator NEWLANDS. You do not say that simply because you are proud of your own State?

Mr. RIPLEY. No, sir; I believe it.

Senator NEWLANDS. As an economist, you believe that to be a fact?

Mr. RIPLEY. As an economist and as a student of public welfare in general, I believe that peace between the corporations and the people is promoted by real efficient regulation and control, having due regard to property rights.

Senator NEWLANDS. Have you ever thought of a national incorporation act for railways as a measure that would tend toward the simplicity of operation?

Mr. RIPLEY. I have not, but I have read with great interest Professor Wilgus, of the law school of the University of Michigan, on a national incorporation act for industrial corporations.

Senator NEWLANDS. I refer only to railway corporations.

Mr. RIPLEY. I have not given that attention.

Senator NEWLANDS. Where a railway incorporated under the laws of one State operates in eight or ten States, and as to them is a foreign corporation, would you deem it better to have such a corporation organized under a national law?

Mr. RIPLEY. As far as a man who is not a lawyer can answer that question, I believe from the point of view of public policy, yes.

Senator NEWLANDS. Have you ever paid any attention to the question of the taxation of railways?

Mr. RIPLEY. Not very much.

Senator NEWLANDS. How do you regard the system of taxation of railways throughout the United States?

Mr. RIPLEY. I regard it as a hardship that an investor in railroad securities should be taxed on those securities if the railway lies outside of the State, while at the same time the railroad is taxed itself.

Senator NEWLANDS. And that is the case under existing conditions, is it not, in very many States?

Mr. RIPLEY. I believe so.

Senator NEWLANDS. That not only the property of the railroad is taxed, but also the stock and bonds which represent interests in the railroad are taxed, thus constituting a form of double taxation.

Mr. RIPLEY. It would appear so.

Senator NEWLANDS. Would you think it would tend toward the simplicity of regulation of railways as to their rates if taxes could

be so adjusted upon the railroads as to leave the stocks and bonds exempt from taxation?

Mr. RIPLEY. You mean taxing the tangible property as such?

Senator NEWLANDS. Yes.

Mr. RIPLEY. That would certainly require a redistribution of that tax throughout the country as between different stockholders. The Massachusetts railroads are taxed by the State, and then the proceeds of that tax are again distributed as between the different local units on the basis of the ownership of their stocks and bonds. The trustee of an estate in Massachusetts is now called upon by the State by the commissioner of taxation to make a report as to securities of railways held by him, and the taxes are collected from the railroads on their tangible property and redistributed on the basis of such a showing.

Senator NEWLANDS. Regardless of the question of readjustment, and viewing simply the question of simplicity of control and operation of railways and also simplicity in financing railways, would you deem it a wise thing, if possible, all other things being equal, to have a system of taxation that would levy a tax according to some mathematical rule upon the corporation itself, leaving the bonds and shares free of taxation, imposing the entire tax upon the corporation itself instead of upon the parts in the hands of bondholders and stockholders?

Mr. RIPLEY. I could not see why that either does not necessarily involve the question of redistribution. Why should the Western States which have the property of the railroads hold all the income from taxes on those roads, when, as a matter of fact, the ownership of those roads is vested in security holders in other States in the East? You have got to redistribute.

Senator NEWLANDS. You have got to tax either one or the other. You have either to tax the parts in the hands of the bondholders and stockholders, or you have to tax the whole in the hands of the corporation, or both.

Mr. RIPLEY. That is my point.

Senator NEWLANDS. Which would you prefer to tax?

Mr. RIPLEY. If you could redistribute I would prefer to tax the original tangible property; but I can not see how the thing would work out to tax a tangible property unless you do distribute the proceeds of that tax as we do in Massachusetts, after the State has imposed it.

Senator NEWLANDS. Then your idea is that if the railway property is taxed in Pennsylvania and there are certain stockholders in that company in Massachusetts, a certain proportion of that tax should be turned over to Massachusetts?

Mr. RIPLEY. That is the principle which we apply in State taxation in Massachusetts to-day.

Senator NEWLANDS. Regarding the control by men who are interested in the great industrial corporations in view of their control over many of the railway systems of the country, do you think there is any danger to be apprehended from that?

Mr. RIPLEY. I think there is going to be danger sometime——

Senator NEWLANDS. As to preference in transportation to such industrial corporations?

Mr. RIPLEY. It is difficult to say. Some of the industrial combina-

tions are apparently working out very well schemes for equitably distributing their products and avoiding the waste of transportation. Certain others one might suspect are still shady in their relations, but I think that evil is passing away.

Senator NEWLANDS. You think that is passing away. One of those shady operations would be the securing of preference in transportation, would it not?

Mr. RIPLEY. It certainly would.

Senator NEWLANDS. Either in rate or service?

Mr. RIPLEY. It certainly would.

Senator NEWLANDS. Now, do you think that that preference is more easily gained if the men who control these great industrial corporations also control the railways over which their products are carried?

Mr. RIPLEY. It would be an inviting proposition to a greedy man.

Senator NEWLANDS. Do you think if such a preference was desired under those conditions that it could be so arranged as to escape the detection of a regulating body such as you would have the Interstate Commerce Commission to be.

Mr. RIPLEY. The more distinguished you make this body the more clearly you give it power to enforce the law, the better appropriation you give, the abler men you put on it, it seems to me the greater is going to be the danger in such case of publicity and exposure.

Senator NEWLANDS. So your remedy would be to make the Commission more equitable and efficient?

Mr. RIPLEY. Make it a real thing. As a matter of fact the interstate-commerce law has turned out to be a good deal of a gold brick.

Senator NEWLANDS. Now, as to the constitution of that commission, do you think that the commission should be composed of lawyers or of experienced traffic managers?

Mr. RIPLEY. Both.

Senator NEWLANDS. In what proportion?

Mr. RIPLEY. It is difficult to say; you have to choose your material as you can get it.

Senator NEWLANDS. Would you make any arbitrary proportion?

Mr. RIPLEY. It would be as dangerous to do that as it would be to define the number of either political party that should be on it.

Senator NEWLANDS. You would leave that to the discretion of the Executive?

Mr. RIPLEY. I certainly would; I would raise it so in dignity that it would stand before the people on a par with the highest court in the United States.

Senator NEWLANDS. You know the custom heretofore has been to place on the Interstate Commerce Commission only lawyers.

Mr. RIPLEY. I think it is a very serious mistake.

Senator NEWLANDS. It seems to me so. Why would it not be well to provide against it by law?

Mr. RIPLEY. Because when you wanted to fill a vacancy you might need a lawyer to comply with the law when there would not be anybody around but a traffic man.

Senator NEWLANDS. We have left it to the Executive, and the Executive has, for twenty-five years or more, been appointing lawyers.

Mr. RIPLEY. They are an insidious class of men.

Senator NEWLANDS. And you think there should be a certain proportion of traffic managers. Why not provide so?

Mr. RIPLEY. It might be well to provide a minimum number.

Senator NEWLANDS. Have you any doubt but that if traffic managers were selected from the body of that profession in the country and made Commissioners, they would be likely to serve the Government and the public as faithfully as they now serve the railroads?

Mr. RIPLEY. I have no doubt whatever on that point.

Senator NEWLANDS. You would not have any apprehension on that point?

Mr. RIPLEY. I have not.

Senator NEWLANDS. Now, as to the size of this commission. You heard the statement as to the complexity of rate making, the nicety of judgment that is required, the feeling of the commercial pulse, and all that. Would you not think it advisable in organizing a commission of that kind, assuming we are going to give it these great powers, to have that commission as near to the traffic managers of the railways as possible, so that they can feel the commercial pulse as well as the traffic managers and be as familiar with the conditions?

Mr. RIPLEY. Yes and no. It does not seem to me that they need necessarily feel the pulse of one special community. My plea all through is that there are too many special rates in this country. There is too much elasticity, and I think we would do better and the railroads would prosper better if they might, under an amended law, divide up their territory and stop stealing from each other traffic which naturally belongs to the other, and stop getting it by giving these special rates, which are always cut down from the other rates. That is where they lose revenue. If they could divide up their territory somehow, they would not need to put in so many of those special rates.

Senator NEWLANDS. Your idea is that the chief evil is surplus, excessive transportation, and also the creation of special rates. Would not that difficulty be met more easily if we should organize this entire country into four or five districts, following the plan of operations of the railways themselves, and if we could have these commissions here, a branch of this commission in each rate-making center, so as to be within easy reach of both the shippers and the traffic managers, with a view to quick adjustment of difficulties?

Mr. RIPLEY. I think the trouble would be that you would not have work enough for them. My judgment all through this thing is that if you give power you render its exercise unnecessary. The very fact that there is an efficient commission in the field operates as it does in Massachusetts. The railroads get into line and conform to what is just.

Senator NEWLANDS. That has been your experience in Massachusetts?

Mr. RIPLEY. I believe it is.

Senator NEWLANDS. How many commissioners have you there?

Mr. RIPLEY. Three.

Senator NEWLANDS. Well, Massachusetts is about 300 miles long and about 200 miles wide.

Mr. RIPLEY. Oh, no; 200 miles long and through the principal part of its length I should say 75 miles wide.

Senator NEWLANDS. It is so great intellectually that I supposed it was greater physically. Now, then, they have three commissioners within that limited space.

Mr. RIPLEY. I beg your pardon, 300 miles. I left out Cape Cod, and we would not want to leave that out.

Senator NEWLANDS. How busy are they kept there?

Mr. RIPLEY. They are well occupied most of the time, but you must bear in mind that they not only pass on railroad matters but on street-railroad matters. At the present time street-railroad matters absorb seven-eighths of their time. They also pass on questions of notes and bonds. They devote almost none of their attention to rates on railroads.

Senator FORAKER. They are not authorized to do anything with railroads except on the question of milk, I believe.

Mr. RIPLEY. But we have a public sentiment in Massachusetts which would act almost instantly.

Senator NEWLANDS. As I understand it, the railroads there have never failed to comply with a request or a direction of the commission of that State; is not that so?

Mr. RIPLEY. I think there was friction once or twice some time ago, but I can not state the details of it.

Senator NEWLANDS. But there is nothing serious in that way?

Mr. RIPLEY. Nothing serious; no.

Senator NEWLANDS. And it was adjusted?

Mr. RIPLEY. It was adjusted.

Senator NEWLANDS. Does not that illustrate the importance of having a competent commission within easy reach of both the shipper and the railroads?

Mr. RIPLEY. I think that is so.

Senator NEWLANDS. We will say that in the case of Massachusetts that commission had been away off in Chicago and had been called upon to act regarding the railways of Massachusetts; do you think it would have been as efficient?

Mr. RIPLEY. Perhaps not; but suppose you have that commission in trunk-line territory. They would not have very much to do; and if they were at Nashville they would be so jammed up with cases that they would not know what to do.

Senator NEWLANDS. But the reason they have very little to do is that they have attended to their business so quickly and efficiently and have settled the principles, so that now there is practically no work. to do?

Mr. RIPLEY. Yes.

Senator NEWLANDS. But suppose originally, when there were questions, many years ago, that the Commission had been away off in Chicago; the matter of adjustment would have been more difficult, would it not?

Mr. RIPLEY. Yes, sir.

Senator NEWLANDS. The matter of expense in organizing a commission of this kind, as to whether the commission should have five or twenty members, would not cut any figure as compared with the importance of its work, would it?

Mr. RIPLEY. I should very much rather see a large sum of money expended in this way than expended in contests and legal squabbles between the railroads and the people.

Senator NEWLANDS. Do you understand the methods of rate making in this country? Are there not about five or six great centers in which the traffic managers meet and arrive at understandings regarding conditions and regarding the measures that are necessary to meet those conditions?

Mr. RIPLEY. I suppose so.

Senator NEWLANDS. There are probably not more than five or six of these great centers of that kind, are there?

Mr. RIPLEY. New York, Atlanta, Chicago—possibly Kansas City, St. Paul, San Francisco.

Senator NEWLANDS. Then, would you see any practical difficulty in organizing this commission in such a way that there should be a commission of three at each one of those points, consisting, say, of one lawyer and two traffic managers, or proportioned otherwise, with the power to all to sit in banc whenever occasion arises?

Mr. RIPLEY. I think you would not have enough for them to do after a few years.

Senator NEWLANDS. That is a consummation devoutly to be wished, is it not?

Mr. RIPLEY. It certainly is. That is what we have in Massachusetts.

Senator NEWLANDS. It indicates peace?

Mr. RIPLEY. It indicates peace.

Senator NEWLANDS. And would not that accomplish the desired results for us quicker than any other method—more quickly than by having simply one central board here, hundreds or thousands of miles away from the scenes of contention?

Mr. RIPLEY. I think so. Nevertheless, after you got peace you might be able to dispense with some of the commissioners.

Senator NEWLANDS. Yes; we could do it then. That is easy enough to accomplish by legislation.

Senator KEAN. I should like to ask two or three questions. You spoke of the Louisville and Nashville road being bought and of the threat of that road to raise the rates. What makes you think that?

Mr. RIPLEY. I take the dispatches in the financial journals—the New York Journal of Commerce and three or four others which we see ordinarily—and read the financial columns of the daily newspapers. I have no intimate personal knowledge, but I take it as an accepted fact that the body of speculative bandits—and I repeat the words—scooped down on the Louisville and Nashville road and took it from the people who had naturally been developing it in its own territory.

Senator KEAN. Do you know the features of that case yourself?

Mr. RIPLEY. I do not, except, as I say, as I get them from responsible financial journals; that they are accepted all through the commercial and financial world to-day as facts.

Senator KEAN. It is true that the road was bought on the market, is it not?

Mr. RIPLEY. I believe it was, but I do not believe it was bought to hold. I believe it was bought to sell out again——

Senator KEAN. If somebody had not disposed of something he did not own, there would not have been much difficulty, would there?

Mr. RIPLEY. There was a little difficulty there.

Senator KEAN. He had to get thirty days on the stock exchange before they could increase the stock that had been sold?

Mr. RIPLEY. There was a little difficulty in that way.

Senator KEAN. You really do not know that there was any threat to raise the rates on the Louisville and Nashville?

Mr. RIPLEY. I have seen the statement in responsible journals that if the road was not taken off the hands of those who bought it the dividend rate would be increased, presumably with the idea of satisfying the market as to higher prices and selling out in that way. It was a speculative raid, pure and simple.

Senator KEAN. There was not an officer changed on the Louisville and Nashville, was there?

Mr. RIPLEY. No. I did not cite it from that point of view, but merely to show you what might have happened, if it had not been bought back again and harmony restored. Suppose the speculators who bought it had not been able to get rid of it. What would they do? They would do what you can find has been done in our past railroad history. Fortunately, it is pretty well by now. I regard that as a most unfortunate incident in American railroad finance.

Senator KEAN. You also spoke of the public demand for regulation—additional power for the Interstate Commerce Commission. How recently have you heard of that public demand in talking with farmers and others?

Mr. RIPLEY. I have talked with a great many people in trips to various parts of the country east of the Mississippi River, and it is my conviction, my earnest conviction, that the people demand a tribunal which shall serve as a disinterested umpire—not because a great many of them know that these evils exist, but they feel that they ought to have some tribunal to which they can go. I believe it would promote peace to give it; and while accomplishing that result you would, by more direct methods, get to the same goal.

Senator KEAN. How recently have you talked with these people?

The ACTING CHAIRMAN (Senator CULLOM). It was stated at the beginning that it was during his investigations for the Industrial Commission.

Mr. RIPLEY. More than that, Mr. Chairman. In two trips to Chicago this last fall and a trip to St. Louis, in which I have met a great many college men who are deeply interested in this question, the almost unanimous opinion of the college professors of economics—I do not represent them, I have no right to—but I challenge anybody to disprove that the almost unanimous view of the economists of this country teaching in our colleges is that we ought to have a more efficient law than we have at the present time.

Senator FORAKER. Do you think they are all as familiar with this subject as you are?

Mr. RIPLEY. I am a modest man, sir. I should hope so.

Senator NEWLANDS. I should like to ask one other question: Assuming that the Interstate Commerce Commission had no greater powers than those conferred upon the Massachusetts commission—only advisory and conciliatory powers; and assuming that the Commission had been organized in the way I suggest, divided into divisions, with a division or branch at each rate-making center of the

country; do you not think we would have made more progress in the adjustment of these matters than we have made?

Mr. RIPLEY. No, sir; I believe you have got to have power—I believe you have got to have power. In Massachusetts we do not need it, because while we have not coal or iron, or anything else of that kind, we have public opinion; and public opinion is the rarest treasure that any State ever possessed. We would not part with it to-day for coal or iron or anything else that all the other States of this country have; and we do not need anything but advisory powers, because the people immediately respond to a recommendation to the legislature in such matters.

The ACTING CHAIRMAN (Senator CULLOM). Professor, the committee is obliged to you for your views and information.

STATEMENT OF MR. E. S. WOODWORTH.

Senator CLAPP. Please state your name, place of residence, and business, and then make such statement as you desire.

Mr. WOODWORTH. My name is E. S. Woodworth; Minneapolis, Minn.; engaged in grain-shipping business.

Senator CLAPP. State, in a general way, the extent of your business.

Mr. WOODWORTH. At the present time our business is fairly large. Probably we are as large shippers of grain and stuff at Minneapolis as there is there, possibly running anywhere from 10,000 to 20,000 cars per year.

Senator CLAPP. Go on with your statement.

Mr. WOODWORTH. This question of the control of rates is something in which I am very much interested, but I scarcely know what to say. Perhaps I had better state the general sentiment among the shippers of my class in regard to the rate-making power being left with the Commission.

I have felt that the present law is adequate, and that if the present law were fully enforced we would be pretty well satisfied.

We object to rebates, of course. I do not know of any, but we feel that if all the shippers would carry out the spirit of the law even as well as the railroad people are disposed to do, we would have very little trouble.

Senator CLAPP. Do you know of any rebates being given at the present time?

Mr. WOODWORTH. I do not.

Senator CLAPP. Do you know of any complaints by which shippers are discriminated in favor of in such a way as to be equivalent to a rebate system?

Mr. WOODWORTH. If at times there were a concentration of traffic over certain lines it would seem to be intended to force the weaker road to make some kind of concession, but I do not know that it has ever been accomplished.

Mr. Senator, I do not wish to talk at random, so if there are any questions you desire to ask me, and I can answer them, perhaps I can get through with this matter more quickly in that way.

Senator CULLOM. Have you given your opinion of what ought to be done and what ought not to be done in regard to legislation respecting the Interstate Commerce Commission?

Mr. WOODWORTH. Only to express an opinion that the rate-making power should not be left with the Commission, and that the present law, if fully enforced, is adequate.

Senator CULLOM. You think that is so, do you?

Mr. WOODWORTH. Yes, sir.

Senator CULLOM. Have you had any experience with the Commission or have you had any trouble with the railroads?

Mr. WOODWORTH. Not myself; no, sir.

Senator CULLOM. Has your firm?

Mr. WOODWORTH. No, sir.

Senator CULLOM. You are a shipper, are you?

Mr. WOODWORTH. Yes, sir.

Senator CULLOM. What do you ship?

Mr. WOODWORTH. All kinds of grain and mill stuffs in carload lots; different commodities and cereals.

Senator CULLOM. Do you know what the present law is on the subject?

Mr. WOODWORTH. I am not entirely unfamiliar with it. I do to a certain extent—I think I do.

Senator CULLOM. Have you ever had any occasion to examine it?

Mr. WOODWORTH. Not with the idea of having a law that would afford me any relief; no, sir.

Senator CULLOM. Have you never called upon the Commission or the courts for relief from oppression by the railroads?

Mr. WOODWORTH. No, sir; because we did not feel that we had any.

Senator CULLOM. You had no complaints to make?

Mr. WOODWORTH. No, sir.

Senator CLAPP. Have you something further to offer?

Mr. WOODWORTH. Only upon the question of distance tariff. If the rates were regulated by distance tariff we feel that that would work a hardship, and you might say almost confusion and chaos.

I would like to cite simply two instances. We have in Minnesota, as Senator Clapp well knows, use for Pacific coast shingles. If a distance tariff prevails, of course those shingles could not be placed in our State.

Take Pacific coast wheat. This year the spring wheat crop was bad with us and we brought ours from the Pacific coast to Minneapolis, where it was ground in our own mills at a profit, and that worked no hardship on the Pacific coast mills. But for that fact we would have had to import Canadian wheat this year.

Senator CULLOM. You brought it from California instead of from Canada?

Mr. WOODWORTH. Yes, sir.

Another thing: We have in the Dakotas, as the Senator well knows, a large amount of lignite coal. A man in the coal fields might, perhaps, say that the rate was comparatively low to Minneapolis, but the rate is, in fact, comparatively high. But for the fact that the rate on that coal enables us to bring it to Minneapolis so as to profitably carry on industries in manufacturing and milling, those industries would not be carried on or would not be developed as they are, because the local consumption does not take care of the output.

I want to say this: So far as I know throughout our State complaints of instances of discrimination have not been traceable to

anything very tangible, and every case I have known of, or almost every case, if laid properly before our own traffic people could be adjusted in some way. Of course, every town thinks its rate too high, but it seems to us that the traffic men are competent to adjust those matters, and if not, the present law—so I am told by men who seem to know—is adequate to provide for it.

I want to say that for a long time we have felt in Minneapolis that there was an inequality of rates; not a discrimination, but a situation that grew out of some exports made to the Gulf. We got together and readjusted those rates so that they are equitable so far as Minneapolis, Milwaukee, Duluth, and Chicago are concerned. That was done without any friction whatever, and matters are now working harmoniously.

I thank the committee.

STATEMENT OF MR. GEORGE F. PIPER.

Senator CLAPP. Please state your name and business, and then proceed with your statement.

Mr. PIPER. My name is George F. Piper; my home is in Minneapolis, Minn.; I am a manufacturer of linseed oil and starch.

Senator CLAPP. Please state, in a general way, the extent of your business.

Mr. PIPER. The concern I am connected with takes flaxseed from the Dakotas and Minnesota and manufactures linseed oil. About one-fifth of that business in the United States is done at our mills in Minneapolis. We have been in the business about twenty-five years, and believe that our present laws are sufficient if they are enforced, and we are not in favor of a commission having power to regulate rates.

Senator CLAPP. What is your experience in regard to rebates or discriminations?

Mr. PIPER. I think they are very rare now. So far as I know they are, since the passage of the Elkins law.

Senator CLAPP. Did they exist before the present law was enacted?

Mr. PIPER. Yes, sir.

Senator CLAPP. Are you receiving any now?

Mr. PIPER. No, sir.

Senator CLAPP. Are you receiving—not necessarily any rebates repaid you—but are you receiving any advantages over others engaged in business in competition with you?

Mr. PIPER. No, sir; we are not.

Senator CLAPP. Absolutely none?

Mr. PIPER. Absolutely none. We ship our product from ocean to ocean and from the Gulf to Canada, and the rates are so adjusted that we are able to do that, but we have no advantage over our competitors.

Senator CLAPP. You get the long-haul rates to the ports?

Mr. PIPER. Yes, sir.

Senator CLAPP. But what I am getting at is whether you know of any practice to-day that in any way provides for giving an advantage to one over another?

Mr. PIPER. I do not.

Senator CLAPP. No secret practice of any kind?

Mr. PIPER. No, sir.

Senator CLAPP. You make that statement fully?

Mr. PIPER. I do, so far as I know.

Senator KEAN. Are there any unreasonable rates in your part of the country, so far as you know?

Mr. PIPER. No, sir.

Senator KEAN. The people are generally satisfied with the rates?

Mr. PIPER. I think the shippers, so far as I know, are well satisfied. I speak now generally of the Minneapolis shippers, and, of course, Minneapolis is the largest primary wheat market in the world. We gather the wheat and grain from the farmers in the near-by country and send that out all over the world.

Senator KEAN. Is not the rate lower to Minneapolis than to almost any other large city in the country?

Mr. PIPER. I do not think it is. We often have that question up before our chamber of commerce, and sometimes we think we are at a disadvantage.

Senator KEAN. You do not think the discrimination is in favor of Minneapolis and against other cities?

Mr. PIPER. No, sir.

STATEMENT OF MR. WILLIAM H. CHAPMAN.

Senator CLAPP. You will please give your name, residence, business, and the general extent of your business, and then such suggestions as you may have to offer on the issue before the committee.

Mr. CHAPMAN. William H. Chapman; residence, Kansas City, Mo.; place of business, from 15 to 50 miles from Memphis, in the State of Arkansas, entirely in the St. Francis levy district. We own our own timber land, bought in that neighborhood in the last fifteen years. We own and operate our sawmills in the distance mentioned from Memphis—15 to 50 miles. We own and operate. We own in that same territory two branch factories, where we work with low-grade lumber into shucks in the knockdown—that is, boxes in bundles. We handle about 1,000 cars a year of finished products, which makes about 2,000 cars of rough material to produce, perhaps a little more. Our principal customers are the cracker manufacturers, the cereal people, soap manufacturers, packing houses, egg-case packages. That would probably cover about 75 per cent.

Senator CLAPP. Where do you distribute most of your products?

Mr. CHAPMAN. We used to sell as far west as Denver, but since the Pacific coast has been so much in evidence we have been driven out of that territory. We go as far into the Southwest as Texas, and to Wichita and St. Louis. To St. Louis we go quite considerably, and also to Kansas City and to Nebraska. About 25 to 40 per cent of our products is a high grade of lumber that goes to wagon makers.

Senator CLAPP. Where is that distributed in general?

Mr. CHAPMAN. All over the country. That will include Missouri, Nebraska, Iowa, Minnesota, Wisconsin. We sell to Studebaker in Indiana, and we sell as far east as Buffalo, and on occasions some in Pennsylvania.

Senator CLAPP. Where are your principal competitors located, in

a general way, and at what point do you come in competition with competitors?

Mr. CHAPMAN. Memphis, Cairo, Helena, and Mississippi River points; that is, on a high grade of lumber. Of course we come in competition with almost everyone. We manufacture some oak and ash and cypress and other woods, that we take from our own lands. The hardest competition we are up against right now is the Pacific coast.

Senator CLAPP. State in a general way your views on this question, before the committee.

Mr. CHAPMAN. In my humble opinion, I think that the Government control—entire Government control—of rates would not be feasible without Government ownership. My reason for thinking it—to illustrate—is that the general traffic manager of the Pennsylvania System is undoubtedly a gentleman familiar with every mile of territory through which his road runs. He is familiar with the product which is produced on his own road, and on that he has got to obtain from his connections lines to pay expenses and dividends, and I believe if that high-class manager was transferred to some of our southwestern roads he would make an utter failure of the management, because he is not familiar with the conditions, local or otherwise; and if that was so it would seem to me that a commission, if appointed, would have the same difficulty to overcome that that gentleman would. Then perhaps a change of administration would mean by the time the gentleman became reasonably familiar with his work a new official. I think that is in a general way my opinion or opinions.

Senator KEAN. You are in the lumber business?

Mr. CHAPMAN. Yes.

Senator KEAN. You are in that territory within which they complain of the rates as being unjust and unreasonable? You are a southwestern lumber dealer?

Mr. CHAPMAN. I am located within 50 miles of Memphis, in the State of Arkansas.

Senator KEAN. There is some complaint here of the rate on lumber.

Senator CLAPP. The complaints, as I recall them, have been on rates east of the Mississippi River. Is that not so, Senator Foraker?

Senator FORAKER. Yes.

Senator KEAN. You do not receive any lumber from east of the Mississippi?

Mr. CHAPMAN. We ship some little east of the Mississippi. I think it is a little difficult getting in there. Our best trade is north and west and southwest; but we do ship as far east as Hawley, Pa., and occasionally Buffalo.

Senator KEAN. Have you any objection to the existing rates at the present time?

Mr. CHAPMAN. I think that they are reasonably reasonable, with the exception of some eastern points, perhaps, in which the southwestern roads would have no control. They can not control anything east of the Mississippi River.

Senator FORAKER. Somebody complained here of the rate to Wichita from the Southwest as compared with the rate to Kansas City. Do you know anything about that?

Mr. CHAPMAN. I think it is only about 5 or 6 cents a hundred more.

Senator FORAKER. Why should it be any more?

Mr. CHAPMAN. Well, it is a great deal farther. That is the only difference. I think Kansas City from our territory is about 450 miles, whereas to Wichita it is 300 or 400 miles farther, with 5 or 6 cents only additional charge a hundred. I should consider that rate reasonable so far as we are located.

Senator DOLLIVER. The complaint we have was of lumber hauled through Wichita to Kansas City.

Mr. CHAPMAN. Probably some local difficulty.

Senator DOLLIVER. Yes; Wichita complains about getting the worst of it.

Senator FORAKER. Is it your impression that the complaint, Senator Dolliver, was that the haul was longer to Kansas City than to Wichita?

Senator DOLLIVER. Yes.

Senator FORAKER. And yet at a lower rate?

Senator DOLLIVER. Yes; the rate from Oklahoma and Texas lumber points through Wichita into Kansas City, claiming that it was more to Wichita than it was for the longer distance.

Mr. CHAPMAN. That perhaps refers to yellow pine produced in Texas, with which I am not familiar.

Senator KEAN. As I understand it, the Santa Fe road is the only road that goes to Kansas City through Wichita, and there is a short line from the Southwest to Kansas City, which is the reason why the rate is made there.

Mr. CHAPMAN. I am not familiar with that special subject and therefore not competent to testify upon it.

Senator DOLLIVER. You spoke of the difficulties a commission would have in making all rates.

Mr. CHAPMAN. Yes; if they had the power to make all rates, it seems to me; that is my humble opinion.

Senator DOLLIVER. What would you say of a provision of law by which no rates were to be made subject to the order of a commission, except in cases of complaint by shippers of the rates charged as being unreasonable and unjust?

Mr. CHAPMAN. Well, I think, without question, that where shippers complain that there should be some remedy.

Senator DOLLIVER. You would have no objection to an impartial public tribunal in such a case. I mean now where the shippers complain that the rate is unreasonable and unjust in itself?

Mr. CHAPMAN. Certainly not.

Senator DOLLIVER. And so you distinguish between such a case and the general power of adjusting differentials, and the rates of commercial advantages to competing localities?

Mr. CHAPMAN. I think it would be very unwise for the Commission to assume to name the rates in all the different parts of this country. I think if the railroads could be controlled by complaints, perhaps, it would cover the matter.

Senator DOLLIVER. You would have no objection where a man complains to the Commission that he has been subjected to an excessive rate, to giving the Commission power to inquire into that?

Mr. CHAPMAN. Certainly not.

Senator DOLLIVER. And if the rate was found excessive, to make an order correcting it?

Mr. CHAPMAN. Certainly.

Senator CULLOM. If you have nothing further to say, you may be excused, Mr. Chapman.

Mr. CHAPMAN. Thank you very much.

STATEMENT OF MR. GEORGE B. ROBBINS.

The ACTING CHAIRMAN (Senator CULLOM). Give the committee your name, place of residence, and business.

Mr. ROBBINS. George R. Robbins; Chicago; I am president of the Armour Car Lines and a director in Armour & Co.

Mr. Chairman and Senators, I wish to be understood in what I say on the subject of private car companies to refer particularly to refrigerator cars, which comprise nearly or quite 60 per cent of the total number of private cars in use, and still more particularly to the equipment of the Armour Car Lines, which also operates the Fruit Growers' Express.

I have been in active charge of this branch of the Armour business since the early days of refrigerator cars, and a brief statement of their necessity and the development, particularly of the various berry and fruit districts dependent thereon, may lead to a more intelligent understanding of the business in which we are engaged.

Prior to twenty years ago suitable cars were not obtainable, and their building by private companies was encouraged by the railways, who from that time to the present have continued such encouragement, particularly as to cars for packing-house products—fruits, berries, etc.—recognizing that the service required is of a special character, necessitating expensive equipment, extensive icing facilities, and a large organization all over the country.

When the building of special fruit cars was first contemplated by the Armour interests it was a grave question whether the regularity of the crops, year in and year out, would justify embarking in such an enterprise, and the phenomenal increase in the shipment of fruit, berries, etc., during the last ten years is largely due to the introduction of an ample supply of special refrigerator cars, which, under careful supervision and systematic refrigeration, added to the constantly improving methods in this special service, has vastly widened the distribution of such products. Indeed the railroads and growers generally welcomed the advent of a suitable car and service with which to get their products to market.

No one else appeared with the courage, even under exclusive contracts with the railroads, to take the chances of building sufficient cars from time to time to keep abreast of the berry and fruit business and put a stop to the enormous losses theretofore experienced by both the growers and the railroads from lack of sufficient and suitable cars.

The private car companies, owners of special cars, furnish them to the railroads at a rental generally of three-fourths of a cent per mile run for refrigerators and no charge whatever is made against the shipper for their use, the railroads charging only their regular rates for transportation of the contents, the same as if the roads furnished their own cars. The rental is therefore a matter between the

railroads and the car companies and does not affect the shipper or the public.

The great majority of shipments requiring refrigeration (berries, fruits, etc., in particular) are ordered refrigerated by the shippers. The car companies load and strip the fruit, berries, etc., in most cases and supervise same in others, thus insuring a free circulation of cold air around each package, and furnish the local initial icing and reice the cars as required at their established stations.

Therefore, contrary to the impression of some, private car companies are not engaged in transporting any commodity of commerce, nor are they engaged in any interstate business in furnishing ice at fixed local points any more than would the coal company furnishing coal to the locomotive hauling a train of interstate freight.

A good illustration of the distinction between shipments refrigerated and those not refrigerated, and showing that refrigeration is not necessary on the same product shipped at the same time, is the orange, lemon, and vegetable business from southern California, which consists of from 25,000 to 30,000 carloads annually. About half the shipments are started under ventilation without ice, and when the thermometer falls below the freezing point the ventilators are closed and cars used for protection against frost. The railroads pay the car company all rentals for such cars, and no charge is made against shippers. When the season advances, and oranges become ripe or puffy, and shippers order certain cars refrigerated, the car company furnishes the initial ice as well as the reicing at fixed local points along the lines of the railroads in the different States where it has icing stations, and a refrigeration charge is made therefor. The same trains generally carry some cars of oranges iced and more that are not iced, this being also true as to lemons and vegetables.

Equipment is parked in advance for business originating in widely separated parts of the country at different seasons, with consequent delays and idle cars. It is a well-known fact that the fruit and berry crops originate in small sections or localities at widespread points throughout the United States, and mature at different times of the year, and when matured and ready for market must be moved promptly, the shipping season generally lasting only a few weeks. For example, the peach crop of Georgia for the year 1904 consisted of over 5,000 carloads, which were moved by the railroads in our cars to distant markets, the harvest season lasting only about six weeks. About 4,000 of our individual special refrigerator cars were required by the railroads to handle that crop. For the local service that was required in superintending the loading, stripping, and icing of these cars by our company a force of upward of 50 experienced agents and inspectors was required besides a large force of laborers.

The estimated crop in Georgia last year was 4,000 cars. On that estimate an adequate supply of ice was arranged for in advance, and not until the crop was moving was it found that the estimate was far short and a thousand cars more than estimated were offered and taken care of by us. To meet this sudden change in the situation some 400 additional carloads of ice had to be hurried there from Lake Erie in train load lots at great additional expense, notwithstanding which no extra charge was made by us over our published tariff of refrigeration.

In North Carolina last year we refrigerated some 3,000 cars of strawberries within a month, or an average of 100 cars per day. One of our principal ice-storage houses in that district burned at the opening of the season and we bought ice at distant points at greatly increased expense for freight and shrinkage without advancing the charge to shippers.

During the present month this North Carolina berry business jumped to the unprecedented, unexpected, and enormous proportions of 200 cars daily, and a delay to empties in New York Harbor, due to fog and poor handling of empties elsewhere, chargeable to blockades, caused a shortage of about half of one day's car supply over a period of several days, making it necessary to dump a large quantity of the berries (which were delayed less than a day), and for which we are now adjusting with shippers claims which will amount to about $75,000, or more than our profits on the business for a long term of years, even if no other vicissitudes arise.

The continued agitation by the commission merchants (the middlemen) through the press bureau of their organization—going to the extreme of demanding the confiscation of the car-line properties, directly if possible or by reductions of refrigeration charges to the bare cost of ice—has naturally deterred us from making large additional investments in cars and is responsible to a large extent for the shortage of cars in North Carolina.

Even with our facilities for doing business—in every State in the Union, Mexico, and Canada—we are likely to have several thousand cars idle during part of the winter season, as comparatively little fruit is maturing at that time.

Again, it often happens that the fruit crop is cut short or practically ruined by frosts, excessive rains, or windstorms after the necessary cars have been parked, and sometimes iced, for the movement of the business.

One year, in Georgia, after we had shipped from Maine the ice necessary to move the peach crop and made full provision in the way of equipment, that crop was completely destroyed by frost—not a carload moving—and the ice stored in advance to take care of it entirely wasted.

I might go on and cite other examples, but these seem sufficient to illustrate the hazards and vicissitudes of the business.

The refrigeration charges to the public are based on the cost of ice, supervision, etc., together with a reasonable addition thereto for general expenses, claims, contingencies, and profit, and are as low as is consistent with first-class service.

These charges are printed and distributed freely among shippers and railways.

Generally speaking, these published rates are maintained absolutely, but in northern California certain adjustments are made with all shippers alike under the same circumstances. On this particular California business it has been found impracticable to publish rates covering all the contingencies which arise and of which the shippers desire to take advantage. For example, a barge will come up the river to Sacramento with perhaps 20 carloads of pears, from different ranches, in various stages of ripeness. Dependent on the weather and the condition of the fruit, a shipper may order a car fully iced,

half iced, or run under ventilation to Truckee, near the top of the Sierra Mountains, or even to Ogden, at either of which points ice is much cheaper than in the California valleys. An adjustment is then made by us with the shipper, varying from $10 to $30 per car, dependent on the saving in ice or other conditions involved. This advantage is open to all shippers and is not a rebate in any objectionable sense, and I am not aware of any complaint on these matters except by a shipper, one Stephens, of about 1 per cent of the business, who has refused any settlement because we would not make a discriminatory basis in his favor.

This is the nature of the so-called "rebates" which were so sensationally exploited by one Streyckmans through the Interstate Commerce Commission at Chicago last week. I ask to be pardoned by the committee for referring to this man and his statements. He openly admitted on the stand that while in the employ of the Armour Car Lines at Sacramento he stole records, letters, and books and sold the information to the managing editor of the San Francisco Examiner, and same was published in that paper last August. He further admitted that he was actuated in his appearance as a witness by revenge for fancied illtreatment, and I think that these admissions are enough to wholly discredit his statements independent of the showing that he had no personal knowledge of the facts and his charges were mere deductions. The committee's attention is called to the fact that this was the only witness produced by the Commission at that "general hearing in the matter of transportation of freights by common carriers in cars not owned by common carriers" affecting the Armour Car Lines.

Senator FORAKER. You refer to this testimony about the Armour Car Lines having a code?

Mr. ROBBINS. Yes, sir; one of the books that he filched was one of our cipher codes.

Senator FORAKER. You did have a code, then, as he produced it?

Mr. ROBBINS. Yes, sir; he read a number of phrases from the code, but he could not show that he ever knew the phrases to be used.

Mileage alone does not afford reasonable remuneration on cars in the fruit business, owing to the unavoidable delay to equipment awaiting loading during the intervals between seasons.

The refrigeration rates must be fixed not with reference to earnings in a harvest time, but as they run in different months, seasons, and years. One company by its thrift and foresight may keep its cars moving ten months out of the year; another, say, six months. Can earnings be based only on the cars that are busy the most and their owners be refused the benefit of their thrift?

To explain the meaning of that, certain railroads have the fruit business moving for one month, two months, or possibly three months out of the year. If they had to provide equipment, they would certainly expect to figure interest and depreciation on the investment for a year, which would be part of the expense. If we can take up that slack and move our cars to different territories and do better with them than each road could to own their own cars, we claim that benefit is ours.

Strictly first-class icing and competent supervision are invaluable to the shipper of highly perishable berries, fruit, etc.

After many years' trial it has been found that the only practical

method of handling the fruit and berry business of large producing sections satisfactorily to the shippers, car lines, and railways is for the car line to agree to furnish all the cars and ice required (in some cases to the extent of 5,000 individual cars) or be responsible for failure so to do, and for the railroad to agree to use such cars only for the particular business in question. This done, arrangements are then made, generally several years in advance, for equipment, ice supply, stations, and other facilities not obtainable on short notice.

The car company does the refrigerating cheaper under exclusive contracts, and agrees in making such contracts with the railroads not to advance the refrigeration charges, and frequently reductions have been made voluntarily when conditions warranted.

Expenditures have been made from time to time by our company until upward of $15,000,000 have been invested in equipment, repair shops, icing stations, and other facilities scattered throughout the country.

Armour Car Lines, a corporation owning and operating all the Armour cars, have never bought, sold, or dealt in any of the products transported in their cars.

Armour & Co. and Armour Packing Company have, to a limited extent, dealt in produce, particularly potatoes and apples, which do not require refrigeration and are seldom shipped in Armour cars, but have ceased dealing in produce since about May, 1904.

I believe one of our branches overlooked these instructions and sold about 50 barrels of storage apples on commission for the owners last winter. Armour & Co. retired from the produce business about a year ago, to avoid any question of the propriety of any Armour interests dealing in products handled in the equipment of the Armour Car Lines for others. They have never dealt in berries and fruits, such as are handled in Armour fruit cars, except for a month or two several years ago they sold on consignment at certain of their small branches some California fruit at the special request of California growers and shippers, because of an oversupply which they were unable to market in the usual way. This, perhaps, injured the commission man slightly, but benefited the grower a hundred fold; but, as stated, the handling of such products in any way has long since been discontinued.

Armour & Co. and Armour Packing Company do a limited business in butter, eggs, and poultry, as a natural adjunct to their packing-house business. This business is handled on equal terms with other shippers, and Armour Car Lines do not solicit business of this kind.

The agitation against the car companies has been mainly instigated by the radical element of associations of receivers or commission men, who generally handle on an arbitrary commission basis the fruits, berries, and produce consigned to them. Only in comparatively few instances are they the owners of the products received by them in our cars.

We claim to satisfy a large majority of the actual growers and shippers, with whom we come most in contact, and they are the ones to be most considered. Even the commission men who are also growers and shippers to any extent, those dependent on a reliable means of

getting highly perishable products to distant markets, generally favor our plan of operation and desire our service at our rates.

I desire to review briefly the statements made by Mr. Ferguson before the committee last winter at great length. Most of the organizations represented by him are associations of retail grocers and butchers, and commercial clubs, who seldom if ever come in contact with private car lines in any way. He intimates strongly a "community of interest" between the railways or their officials and our company. I wish to state that such relation or collusion does not exist now, nor has it ever existed. No railway company or official has ever had any interest whatever in our company, and our relations with the roads have been based purely on merit and their desire to have the use of our cars for mutual benefit, and to meet the public demand for special equipment.

He stated that independent shippers are at a disadvantage because Armour & Co., deal in fruit or produce in competition with them.

I can state of my own personal knowledge that when Armour & Co. did deal in a small way in produce (which they have discontinued), their produce department never had any knowledge of the business of the car company and never took same into account in their trading, but handled the shipments on their own merits exactly as if there was no car company controlled by the Armours.

Armour & Co., or any Armour interest, have never engaged in buying and selling small fruits and berries, of which most of our car business consists, except as before explained. The produce handled by them formerly consisted mainly of potatoes, apples, beans, etc., which are not refrigerated, and as a rule were not shipped in Armour cars.

His statement refers to "contraband freight" being delivered without charge, the desired inference being that shipments are made by Armour & Co. without the payment of freight.

The existence of any such practice I am in a position to deny absolutely.

Mr. Ferguson in his statements refers frequently to Michigan fruit business. Much stress is laid on the alleged advance in our charges because of an exclusive contract made with the Pere Marquette Railroad Company, copy of which is submitted, no advance in our charges anywhere else being cited.

The facts are, briefly, as follows: In 1900 we furnished refrigeration to shippers of Michigan peaches, and, under the railroad rule or classification then in effect, the railways paid us for, or absorbed, the cost of ice both at loading stations and en route, and our rates were based on these conditions. I can not recall a similar rule having ever been in effect elsewhere.

In 1901 or 1902 the Michigan roads changed this rule and discontinued furnishing the ice free, and we advanced our charges to cover the additional cost of ice to us.

We had nothing whatever to do with this change in rule, and our profit was not increased in the increased charge for refrigeration over the previously abnormally low one. The matter is one entirely between the road and the shippers and is not chargeable to the car lines in any way.

The following is an extract of the testimony of Mr. Patriarche,

traffic manager Pere Marquette Railroad, at the Interstate Commerce hearing in Chicago during June, 1904, confirmatory of this:

"Mr. URION. During 1901 the Armour Car Line was not on your line of road, was it?

"Mr. PATRIARCHE. We had miscellaneous refrigerators that year.

"Mr. URION. During that year you made no charge for ice; is that correct?

"Mr. PATRIARCHE. That is correct.

"Mr. URION. You commenced making a charge for ice, did you, prior to making of the contract in question with the Armour Line?

"Mr. PATRIARCHE. We started in 1902 making a charge for ice, regardless of the contract with the Armour Company.

"Mr. URION. There was doubtless some reason for your discontinuing to furnish ice free, was there not?

"Mr. PATRIARCHE. There was a good reason.

"Mr. URION. What was the reason?

"Mr. PATRIARCHE. The cost and labor for icing made such inroads into the revenue that the railroad companies obtained they were forced to go out of bearing that burden."

The low refrigeration charges quoted by Mr. Ferguson as sometimes obtainable in railway refrigerators is in cars admitted not to be suitable for berry and fruit business and which have small ice tanks—about half the capacity of those in our fruit cars—and consequently much more cheaply iced, but with unsatisfactory results, as will follow.

He stated further that the Michigan testimony discloses conclusively that there is no public demand for our service; that the shippers do not want it; that they never had any more trouble getting cars prior to the inauguration of the Armour system than since; that there was no wider distribution or advantage to Michigan growers from our service.

These statements are best answered by the following extracts of the testimony of some of the eight largest Michigan growers and shippers at the Interstate Commerce hearing at Chicago, and we offered many more such witnesses if wanted:

TESTIMONY OF MR. CORBIN.

"Mr. URION. Prior to 1902 and 1903 where was the bulk of stuff in your community shipped?

"Mr. CORBIN. Most of it in those years, by not having refrigerator cars and buyers there to buy of us, was shipped to Milwaukee and Chicago.

"Mr. URION. Were they regarded as markets that were as good as outlying markets?

"Mr. CORBIN. No, sir; it had been the talk of the growers that they wished they had some way they could load cars and ship them to different points, so as to relieve the glut that happened at Milwaukee and Chicago, which we got before 1902 and 1903.

"Mr. URION. Did it result in reaching the East?

"Mr. CORBIN. Yes, sir.

"Mr. URION. Did it result in additional profits and enable them to get better prices?

"Mr. CORBIN. Yes, sir.

"Mr. URION. Taking all into consideration, will you state to the Commission whether you regard the refrigeration rate of the Armour Car Line as excessive?

"Mr. CORBIN. From a business point of view, rather than to go back to the way it was before, I think the rate is not exorbitant at all. I would rather pay the prices to-day and be sure of the service we get."

TESTIMONY OF MR. GURNEY.

"Mr. URION. State to the Commission in your own way and in your own language your feeling with respect to the installation of Armour cars on the line of the Pere Marquette—the advantages and the disadvantages.

"Mr. GERNEY. Well, it is a great advantage to the growers in our place and county. The reason we could not get any buyers was they would not come there, as we could not get cars. I sold my peaches one year—I think it was in 1899—to a party with the understanding that I was to have so much a bushel—I think it was a dollar—provided he could get cars. He took quite a good many and then told me that he could not take any more, that he could not get cars.

"Mr. URION. Then the installation of these cars has resulted in diverting the shipments from your community, from Chicago to other and far-distant points?

"Mr. GERNEY. Yes, sir; since the Armour cars came we could get good service and plenty of buyers, and we get our peaches through to Connecticut, Boston, New York, and Columbus, and do not have any trouble.

"Mr. URION. But you have to pay a refrigeration charge?

"Mr. GERNEY. But the refrigeration charge does not amount to anything compared with service. Since Armour cars came in 1902 and 1903 I have made 50 per cent more as a grower than I did before. I never got a refrigerator car that I was dead sure would take my fruit to destination until the Armour people came in."

TESTIMONY OF MR. M'CARTY.

"I have been in business there about forty years and have been a peach shipper, and of course we have had lots of trouble shipping peaches and getting them shipped to a distance. We had to ship them locally a great deal and had met with loss. Since the Armour car service went in we have had good success with our peaches. In 1902 I shipped 45 cars and made money on all of them. I shipped 7 (outside cars) by the Grand Trunk. I got the cars free and paid for the icing; I lost on all of them.

"Commissioner PROUTY. Did you pay the full charge?

"Mr. McCARTY. Yes, sir; from $35 to $50. It paid me to do it."

TESTIMONY OF MR. LOOMIS.

"My experience has been the same as the rest of them. I have been shipping twenty years. The shipments have got to be taken care

of as they go through, and until the Armour Company took care of them we did not have that service.

"Mr. URION. Has the profit to the growers and shippers in your community been enhanced by the use of Armour cars, notwithstanding the refrigerator charges?

"Mr. LOOMIS. It has.

"Mr. URION. They have made more profit by the payment of the refrigerator charges and getting the service than they did under the old arrangement?

"Mr. LOOMIS. Yes, sir; because buyers came in there and we could have them when we did not get the cars and service."

Mr. Ferguson stated that various railways were anxious to put their own cars into Michigan.

Even if other roads were willing to supply a few cars none of them are willing to agree to furnish all the cars required even for business via their own line, and they do not consent to their cars being routed over other roads. The cars they proposed to furnish were admittedly not suitable for peach business, and the roads would not guarantee their refrigerating qualities.

If each connecting road tried to furnish its own cars, endless confusion would result in trying to get each shipper at each of the scores of stations the kind of car wanted, properly iced in advance, and for a certain destination over a certain route. The fruit is frequently loaded before its destination or route is decided, and our cars are free to go to any destination by any route, thus saving the railways great trouble in getting certain kinds of cars to certain shippers and providing a great convenience and advantage to shippers by permitting change in destination and routing even after loaded.

The chairman put the following question to Mr. Ferguson:

"Are you sure that none of the private car line companies publish their rates from their various offices, as the railroad companies are required to do? I think you answered in regard to that as respects the Armour Car Lines Company."

Mr. Ferguson replied:

"My information is that none of them publish their rates from their offices, as required by law."

The fact is, we print from 500 to 1,000 copies of refrigeration tariffs for each district and distribute them freely among shippers and railroads; our district offices have a full supply and a copy is obtainable by anyone upon application.

I might also say that those tariffs are furnished by the railroad to each of their local agents, which can be seen at the shipping station.

The ACTING CHAIRMAN (Senator CULLOM). It is not required by law that you shall publish these schedules?

Mr. ROBBINS. No, sir; but we do publish them.

Senator FORAKER. You are not required by law to publish them if you are not subject to the interstate-commerce law; but that is a question of law itself.

Mr. ROBBINS. But nevertheless we publish them and distribute them, and the Interstate Commerce Commission or anybody else can have the copy if they wish, for nobody is refused a copy.

Senator KEAN. There are none filed with the Interstate Commerce Commission?

Mr. ROBBINS. Not formally; no, sir.

He stated we had the unrestrained privilege of charging the public any price the traffic will bear for the service.

When making contracts with the roads reasonable charges are worked out with them, and our contracts forbid us to charge any higher refrigeration than is specified and which is considered reasonable.

For example, see paragraph 4 of Pere Marquette contract offered by Mr. Ferguson and printed.

He states, "you will search the Armour Car Line contracts in vain for any bond to insure a fulfillment of their engagement to provide cars."

Our agreement is universally considered as good as our bond, and in the rare cases where we have failed in any way under our contracts we have responded in damages for such failure.

I might say, in this North Carolina case, where I figure the loss will amount to $75,000, we had no bond, but that makes no difference in our settling the damages.

The ACTING CHAIRMAN (Senator CULLOM). What was your statement in reference to the North Carolina case, as to your losses?

Mr. ROBBINS. The berries which could not be loaded on account of shortage of cars, to which we are liable, were dumped and we are paying for the berries. We have an attorney in North Carolina now, who has been there for a week. A committee agreed on a basis as to what the berries were worth each day, and we are settling with the shippers on that basis.

The ACTING CHAIRMAN (Senator CULLOM). You say you paid out how much?

Mr. ROBBINS. We estimate that we will have to pay out $75,000; I do not think any of the money has been actually paid yet. This only occurred about a week ago.

Mr. Ferguson claims that self-interest may prompt us to withhold cars. Our practice and generally our contracts compel us to serve all shippers alike in districts we undertake to serve without any discrimination. It would be suicidal to do anything else, and there is no incentive for any such action as intimated.

He submits copies of lengthy correspondence with a certain railway on the subject of the right of shippers to route their business, and in his discourse on this subject says:

"Under the private car line system, however, these privileges are all taken away from us."

The fact is that the reverse condition prevails. The routing rests between the shippers and railways and we take no part in same in any way and have nothing to do with the transportation.

I might say in that connection that I believe last year or year before there were one or two lines of railroad which undertook to route the freight. I believe the Interstate Commerce Commission have made a ruling against that, particularly in the California case, and the shippers there now have the full right of routing; but we never had any connection with it in any way, shape, or manner.

The "Frisco System" letters, quoted at great length and so profusely dwelt on by Mr. Ferguson, bring out these salient points which

should not be lost sight of: The road states they reserve the right to route shipments beyond their own line and employ refrigerator equipment as they may elect.

That their interests are to encourage the grower, and one of the first essentials of same is an adequate supply of suitable cars.

That they expected to move 1,000 to 1,200 cars of berries and they had contracted with the Armour Car Lines for equipment. That Mr. Ferguson's company (Duluth commission merchants, not growers or regular shippers) was the only one to object to the plan arranged (for a car company to supply refrigeration) or that desired to take the burden of supplying cars upon themselves.

I state positively that the growers and shippers have full latitude in the matter of routing their shipments so far as we are concerned, but would be greatly restricted if the various connecting railways were to be depended upon to furnish their cars, for the reason that the cars would have to be routed over the road of the owner.

Special reference is made to a clause in our Pere Marquette contract by which they agreee to furnish such ice as they can at certain points. This is at a few points where they can spare it from their supply for company use, and consists of but a small fraction of the ice used by us, the balance coming from various points where obtainable to best advantage. This method of supplying ice by the railroad is a rare exception and creates an entirely wrong impression.

Mr. Ferguson stated as follows:

"Car line companies simply instruct railway station agents at point of origin to write on bill of lading 'ice when necessary,' or at certain points, and connecting carriers obey these instructions."

The facts are as follows: We furnish every pound of ice used in California, Georgia, the Carolinas, and Florida, and many other of the largest shipping districts. From most districts to destination we supply besides the initial ice all ice used en route from our own stations, with our own labor, superintended by our own salaried men.

We have an 18,000-ton ice house at Toledo, on the Lake Shore road, and an equally large one at Columbus on the Pennsylvania lines. We have stations of our own at Buffalo, Albany, Altoona, East St. Louis, and probably 50 other points. At many important points we not only do not buy ice from the roads but sell them ice from our supply. We do sometimes buy ice from them at certain points where small quantities are needed and when it is obtainable from them cheaper than we could supply it ourselves.

Much more has been charged against us in this hearing with respect to the business originating on the Pere Marquette Railroad, almost as if that line were operated in our interests.

That business has naturally been selected because it is most open to attack from their standpoint and the hardest to defend from ours.

This Michigan peach business matures late in the season, in a northern latitude (during September and October), when the weather is comparatively cool. Of the crop amounting to some 6,000 to 8,000 cars only one-fourth to one-third is refrigerated, the balance moving to comparatively near-by points, such as Chicago, Milwaukee, Indianapolis, Detroit, etc., indicating that any refrigeration at all is not necessary and less perfect refrigeration is required than from other fruit and berry producing sections.

We made no effort to take care of the business until a few years ago, when some of the Michigan growers and railways who knew of our plan of operations elsewhere came to us for equipment and service on their lines, because of the difficulties before experienced by them. We were somewhat in doubt about undertaking the business, in view of the conditions, but finally made an agreement for one or two years for part of the business in question—Grand Rapids, for instance, being at first excepted.

Later the service and conditions where we operated proved so satisfactory to the railways and the shippers most interested that the Pere Marquette extended the arrangement to cover Grand Rapids and all competitive business.

We have recently completed arrangements whereby our refrigerator rates from Michigan for the coming season will be reduced from about 15 to 25 per cent, owing to economies possible in our operations and to the Pere Marquette's bearing a part of the reduction.

We are making reductions in various other districts this season, in keeping with our general plan to do so to the limit consistent with good service.

This Michigan peach business is less than 2 or 3 per cent of our total fruit and berry shipments; and complaints on other business are not only conspicuous by their absence, but our service and plan of operation is generally satisfactory and even commended by the great majority of actual growers and shippers, whose interests deserve first consideration.

Mr. Ferguson refers to the northern California conditions, which I am glad of an opportunity to go into briefly, as that is the oldest and largest district shipping green fruits. They have had the most experience in private car line matters, such as are under discussion, and the service is the most exacting because of the long distance and time of this highly perishable fruit in transit.

I beg to quote briefly from the 1903 report of the Sacramento, Cal., Chamber of Commerce on this subject, which was prepared after a lengthy and most thorough investigation of the subject:

"The long-expected report of the commerce committee of the chamber of commerce on the charges of R. D. Stephens, based on his report handed in to the State fruit growers' convention at San Francisco last fall, that all growers of deciduous fruit lost money last season and that the chamber of commerce was acting unjustly to eastern people in advertising that money could be made in the growing of fruit in this section, was received at the meeting of the directors of the chamber May 27, 1903, and read by M. J. Dillman, chairman of the committee.

"There were present at the meeting Col. H. I. Seymour, vice-president, presiding; Dwight Miller; D. W. Carmichael; Grove L. Johnson; H. Weinstock; J. H. Arnold; A. C. Hinkson; C. H. Reuter; M. J. Dillman; R. D. Stephens, and M. R. Beard, secretary.

"Following is the full text of the report:

"*To the Directors of the Sacramento Chamber of Commerce.*

"GENTLEMEN: Your committee on commerce, to whom was referred for investigation the subject-matter of the report of the committee on transportation of the twenty-seventh fruit growers' convention, held at San Francisco, December 2–5, 1902, relating to the

transportation, refrigeration, and distribution of deciduous fruit shipments from California to the Eastern States and their effect upon such industry, beg leave to report as follows:

"This report is in the form of a letter addressed to William Sproule, freight traffic manager of the Southern Pacific Company, accompanied by a 'tabulated statement' showing sales in eastern markets of California green deciduous fruits from July 5 to 17, and also a concentrated statement of sales from July 30 to August 20. The work of your committee consisted in an effort to make as full an investigation as possible into all the facts connected with this report, and generally with the question of the permanency and profitableness of the fruit-growing industry in California, and report the same to your honorable body.

"The report of the committee on transportation owes its origin, as appears from the face of it, to a certain contract entered into between the Southern Pacific Company and the Armour Car Line Company, the terms of which are that the said car line company binds itself and agrees to furnish to the Southern Pacific Company, at all times and in such numbers as may be required, 5,000 cars, or such number as is necessary to secure to the fruit-shipping interests of California a sufficient supply of combined ventilator and refrigerator cars for the transportation of fresh fruits and vegetables from California to the Eastern States, in return for which the Armour Car Line is given the exclusive privilege of furnishing the refrigerator equipment so long as they comply with the conditions here noted. This contract is assumed by Mr. Stephens, the author of the report, to be responsible for all the losses sustained by the fruit growers of California during the season of 1902, and would therefore be responsible for disastrous losses in the marketing of fresh California fruits in the East so long as it remains in existence—three years. Mr. Stephens also claims that this contract gives the Armour Car Line the absolute control of the shipments at this end of the line and the marketing of the same at the other end. The report also charges that California fruit growers are being discriminated against in the matter of rates, as compared with those charged for similar service from Oregon and Washington.

"The committee on transportation, which became the sponsor of the report under discussion, was composed of R. D. Stephens (chairman), Alden Anderson, A. H. Naftzger, A. N. Judd, and Alexander Gordon. R. D. Stephens, who publicly assumes the responsibility of writing this report, is a large and successful grower of deciduous fruit, especially Tokay grapes, from which he has, in the past twenty years, obtained a lucrative income, if he has not accumulated a modest fortune therefrom. Alden Anderson, the present lieutenant-governor of California, refused to sign the report. Mr. Anderson is an extensive grower and shipper of deciduous fruits, with headquarters at Suisun, and is also manager of the California Fruit Distributors, through whose agency over 86 per cent of the deciduous fruit of California was marketed during the season of 1902. A. H. Naftzger, the president of the Southern California Fruit Exchange, on the floor of the convention, after the presentation of the report, disclaimed any knowledge of the 'tabulated statement,' saying that he had no part in its preparation and knew nothing regarding its correctness, and disclaims any responsibility in connection therewith.

A. N. Judd is a grower of apples in the Pajaro Valley, Santa Cruz County, and Alexander Gordon is a raisin grower in Fresno County.

"The history of the transportation of deciduous fruits to eastern markets records in its earlier days repeated failures, and at the inception the cost was so great as to make the general use of refrigerator cars practically prohibitive. These rates were gradually reduced until, in 1893, the tariff of $175 was established as the rate from Sacramento to New York on 24,000 pounds, the rates to other places being in proportion. At this time there were five refrigerator car lines operating in California, and all testimony available shows that no year passed but that there was a shortage of cars at some time during the season, occasioning thereby considerable loss to the grower. * * * The division of the fruit shipping business among these five companies did not justify any one of them in erecting the extensive plants and putting into operation such a complete system for the refrigeration and care of green deciduous fruit while in transit as is necessary and as is now in operation throughout the United States. Such conditions prevailed until 1900, when a contract was entered into between the Southern Pacific Company and the Armour Car Line Company giving the car line the exclusive privilege of operating in California, in return for which the car line obligated itself at all times to provide sufficient number of refrigerator and ventilator cars to all shippers on equal terms. The rate was reduced by the Armour Car Line from $175 to $100 from Sacramento to New York on 26,000 pounds, and the rates to other places proportionately decreased.

"Thus it will be seen that the grower and shipper of California tried for many years to secure refrigerator cars for the transportation of their products to the East, having several sources of supply to draw from, and frequently found the same inadequate to meet their wants when needed. Moreover, the service was often not to be relied upon, owing to the fact that no one of the companies at that time had the necessary equipment to insure the best service, but since only one car line has been operating in California there has never been a time when there was not an adequate supply of refrigerator cars at the disposal of the grower and shipper of deciduous fruits, so that it would seem to be unwise for the fruit interests of California to desire a return to the old system.

"The only other means by which the fresh deciduous fruit of California could be marketed would be for the carrier—the Southern Pacific Company—to construct its own refrigerator cars, and a moment's reflection will show the impracticability of this scheme, for it would require an investment of upward of $5,000,000 on the part of the railroad company to furnish the necessary equipment to move the vast amount of California fruit, and for a good part of the year a considerable portion of the cars would lie idle on side tracks because of the disparity between the volume of deciduous-fruit shipments during the summer months and that of the citrus fruits during the winter months, as well as lack of freight during the intervening months between the two seasons, when the movement of fruit is exceedingly limited in quantity. The construction of such a refrigerator equipment would require several years to complete, and when completed it is questionable whether such an equipment would com-

pare favorably with the cars now handling this business, inasmuch as the cars now owned and used by the Armour Car Line Company are the result of many years' experience in the refrigerator business and are covered by many patents, and the use of such other cars would not give the grower and shipper the full assurance that these cars had not, between seasons, been put to uses which would be very detrimental to the car again being used for fruit shipping. Such an investment would not recommend itself to any business man, and the maintenance of such an equipment would impose an additional tax on the fruit industry not warranted by the circumstances.

"The equipment necessary to handle this vast business, amounting approximately to 30,000 cars of fresh fruit, seemingly can best be obtained from a single car line company which has the ability to find use for such equipment every month in the year somewhere in the United States, Canada, or Mexico, thereby lessening the cost to the California grower by reason of the fact that the earning capacity of the car is not diminished when California fruit loads are not available, and which insures better cars, used for fruit-shipping purposes only, better refrigeration and more constant care than can be had where numerous car lines are operating in the same territory. So far as this committee can ascertain, no method obtains at present whereby safe and effective refrigeration in a large way, as required by California, can be had except through some large system having its ramifications throughout the United States and Canada, and the Southern Pacific Company seemingly acted in the interest of the fruit grower as well as their own in making this contract with the Armour Car Line.

"A slight digression at this point as to what refrigeration is, means, and how it is accomplished would not seem amiss. The car, before it is loaded after its long, hot, and dry trip westward, is cooled before being reloaded by having its ice tanks filled with ice. This ice rapidly melts and must be taken into consideration as a part of the cost of the service. After the car is loaded the tanks are again filled. Contrary to the commonly conceived idea, this is not sufficient to keep the fruit in good condition until its long journey of often 3,000 miles or more, and lasting from twelve to twenty days, is ended, but has to be replenished from time to time as is needed, according to the state of the weather, nature of the fruit, and the time consumed. This necessitates the erection of ice-houses and loading plants and the storing of vast quantities of ice all over the United States. The erection of these large icing plants and the conservation of the vast quantities of ice needed for this work by several companies would mean a duplication of plants and an expenditure that good business judgment would not dictate, owing to the problematic nature of the business to be done and the ice to be consumed, whereas with one company it becomes a more simple matter to estimate the necessary number of tons of ice and the cost of such work, knowing to a very close approximation the number of cars each season to be shipped. Therefore, in the judgment of your committee, better and cheaper refrigeration can be obtained by the fruit growers and shippers of California when operating with one line, where they are sure of first-class service and constant care of their fruit from the time it leaves California until it arrives at its destination, than they could by trusting to several re-

frigerator companies, no one of which could afford to provide as ample an equipment and equal service.

"Your committee has examined the original contract between the Southern Pacific Company and the Armour Car Line, and has carefully considered the terms thereof.

"This contract is a plain business instrument, which was in the interest of the Southern Pacific Company to make, because it fixes the responsibility in the event of a failure to furnish cars to the shipper when needed, and it is in the interest of the grower, because so far as we are able to determine it absolutely guarantees to the grower and shipper an adequate supply of ventilator and refrigerator cars whenever needed to handle their products. The Armour Car Line has not controlled and does not and can not control the routing of a single carload by reason of their contract with the Southern Pacific Company. On the other hand, it is well known that the shipper of deciduous fruit routes his own cars, and the Armour Car Line under this contract is obligated to give every shipper proper and effective refrigeration upon equal terms, and there is absolutely nothing in the contract that could in any manner be construed as giving the car line any control over the transportation, destination, or distribution of the fruit, which they must care for and properly refrigerate whatever its destination may be or to whoever it is consigned.

"That this contract is viewed as beneficial to the fruit interests of California is evidenced by the fact that the consignors of 86.47 per cent of all the fresh deciduous fruit shipped from California during the season of 1902 in a letter to the Southern Pacific Company, under date of November 12, 1902, expressed themselves as follows:

"'We, noting that your company has recently closed a three-year contract for the use of Armour cars for fruit shipments from California, desire to express our gratification that these carriers have decided not to make any new experiments in the refrigeration of deciduous fruits, the most perishable freight known. We feel satisfied that change of management and method in relation to refrigeration would be likely to entail serious loss on growers and shippers, until the details of the operation were perfected in the course of time by the new owners, and no demand for change which necessarily involves these chances comes from the large body of shippers most interested in the industry.

"'The efficiency of the present refrigeration service has been tried and tested and found satisfactory, and we feel our interests are best served by a continuance of your present relations with the Armour Car Lines.'"

I will refrain from taking your time in answering Mr. Ferguson's wild guesses on the profits of others' business or his predictions of the dire results which might follow if certain remote contingencies arose or the injury which might come to the commission men's business if some new competition entered their field, feeling that such theories carry no weight with this committee, but that they want facts and conditions and not theories and generalities. Although the last day's statements of Mr. Ferguson were directed against us in many respects, I am ignoring same, as I believe most of them are on the same lines as those answered, and to reply to them in detail would be a repetition to a large extent.

The report has gained some circulation that the car companies in some way are used as a means or device for the payment of railroad rebates to shippers. This I desire to deny in the most positive and sweeping way. No such practice is indulged in by us, and the car business is conducted on its own merits and account without any connection with rates on the contents of their cars.

As to the acceptability of our present plan of operation to the railways, it is perhaps sufficient to say that a growing disposition in our favor is shown by their continuing to make time contracts with us right up to the present, some of which contracts have many years to run, based on logical reasons and for the mutual benefit of themselves and their shippers.

The question of exclusive contracts has been mentioned in a great many different connections. I desire to explain for the benefit of the committee that same are not entered into by the railroads without careful consideration and after consultation with the majority of the influential growers and shippers. In some cases, in fact, an organization of the shippers has negotiated with the various car lines direct and taken bids from them for supplying refrigeration, and after deciding on terms has requested the railroads to make an exclusive contract with the car line selected. The use of such cars and their refrigeration is therefore not forced on the shippers without their knowledge or consent, as has been intimated, but the exclusive contracts are made after consultation with the various interests most affected. This is plainly shown from statements of the growers who recently appeared before the House committee and from the statement of the Sacramento Chamber of Commerce, of which I have given an extract. These contracts are open to competition before they are made, but it is a practical necessity to close them in advance for one or more seasons in order to allow time to build cars, provide ice, stations, and all other necessities. Under these exclusive contracts the shippers generally make claims on the car line for damages growing out of faulty cars or improper refrigeration, and the car line responds in damages for any shortcomings for which it may be responsible. The shippers have recourse on the roads direct as well, if for any reason they have any greater legal or business claim on them than on the car line, and the car line is still liable to the roads, as is evidenced by clause 7 of the Pere Marquette contract (introduced by Mr. Ferguson and printed), as follows:

"The car line agrees to assume all liability for, and promptly adjust and pay, and indemnify and save the Pere Marquette harmless from claims arising from any failure on its part to properly ice and keep iced said refrigerator cars furnished and supplied by it as aforesaid to the Pere Marquette."

We actually paid claims in California one season for a large amount, owing to a temporary shortage of cars for which we were indirectly to blame and responsible, and another season similar conditions occurred in Georgia, and we responded in damages to a number of growers.

We receive claims on refrigeration from shippers and settle them direct on their merits without the knowledge or intervention of the railroads. We sometimes are unable to agree with claimants on their claims for damages, and occasionally it is left for the courts to decide between us.

We freely admit the right of shippers to bring suits against us direct for faulty refrigeration.

In various localities we compete with refrigerator cars owned or operated by railways in fruit and berry business. For example, practically all the very large refrigerated business from California, Colorado, Texas, etc., and our refrigeration charges are the same as theirs for equal service and same are in line with our charges from other localities, indicating that our charges in the abstract are reasonable and in keeping with what they would be if the railways furnished their own refrigerator cars generally.

Superior refrigeration service, like superior quality in any given commodity, receives a preference even at an increased cost.

Our opponents have taken great pains to show the refrigeration charges sometimes obtainable for partial refrigeration of the more hardy fruits, etc., in railway cars of less than half the ice capacity of ours as a basis for comparison with our charges.

The growers of highly perishable fruit and berries, such as we serve in the main, are willing and anxious to pay an increased charge for superior refrigeration such as we furnish, well knowing it is the best investment they can make. The additional cost generally returns tenfold in the prices received at far-off markets.

When a railway furnishes refrigeration at cost of ice as demanded by some of the middlemen, it means an inroad into the roads' freight revenue for the various other items making up cost of refrigeration, and it is plain we can not furnish high-grade refrigeration without charging for all the items entering into it, and something for profit besides.

Such preference is shown decidedly by the shippers generally and I claim it to be a credit to us to furnish a service desired at an increased cost, and any comparisons on charges without a comparison of service rendered is misleading. It was shown by the growers and shippers before the House committee recently, and the Interstate Commerce Commission report last year, that the service we render is of a superior grade and practically amounts to an insurance of the fruit or berries the service is intended to protect.

These representative growers and shippers made it clear that they prefer to pay a good price for the best service such as we supply.

That " the best is the cheapest " is as true in connection with refrigeration service as anything imaginable.

The increase in the fruit and berry business under private car-line service and supervision has been phenomenal.

The California business in about ten years has increased from some 15,000 cars per annum to about 35,000 cars.

In Georgia the peach shipments prior to 1900 averaged less than 1,000 cars per annum. This has increased rapidly under our exclusive contract system until last year it amounted to over 5,000 carloads of peaches alone.

The Carolina berry business has developed under the private car-line system from almost nothing some ten years ago to nearly 3,000 cars last year, and a further large increase is expected another year.

Great development has likewise taken place and in connection with our service in Idaho, Texas, Colorado, and various other sections.

Instead of depression or evidence of oppression we encounter such growth in the sections in which we operate that we are hard pressed

at times to furnish equipment, ice, and facilities to take care of the business.

It is a pertinent fact that the sections which have increased in production of fruit, berries, etc., by leaps and bounds during the last five or ten years are those which we serve.

In conclusion I desire to emphasize the point that, as I understand it, the present law in the most sweeping way forbids discrimination by any device, through car lines or in any other way.

I, however, think it is wrong to make private car companies, of which there are several hundred (some having only a few cars), common carriers when they are not engaged in transportation, or to undertake to make refrigeration, which is a local service and at best only an incident to interstate traffic, subject to regulation.

I desire to add that there are a great many bona fide contracts in force between the railroads and car companies in all sections of the country which run for various terms, up to seven years at least, which, together with numerous patents owned by these companies on the combination ventilator and refrigerator cars, have a direct bearing on any legislation as a whole, and particularly any clause fixing the mileage or rental to be paid the car companies by the roads, which, of course, does not affect the shippers or public.

Senator CULLOM. Have you concluded your statement?

Mr. ROBBINS. Yes, sir.

Senator CULLOM. Just exactly what firm or corporation do you represent?

Mr. ROBBINS. I am president of the Armour Car Lines, which is a corporation owning all of the so-called "Armour equipment."

Senator CULLOM. How many are there?

Mr. ROBBINS. About 14,000.

Senator FORAKER. Fourteen thousand cars?

Mr. ROBBINS. Fourteen thousand cars.

Senator CULLOM. I see here a memorandum, in what purports to be a list of private cars—I do not know whether it is right or not—"Refrigerator cars, 49,807." Whose are they?

Mr. ROBBINS. My opinion is that there are more refrigerator cars in the country than the number you have mentioned; but the others would be owned by all the private car companies, of which there are several hundred, and the railroads. I do not know. The statement you have may not include the railroads.

Senator CULLOM. I will read what is stated here: "Refrigerator cars, 49,807; tank cars, 14,792; stock cars, 11,357; poultry cars, 325; box cars and coke racks, 20,964; coal cars and gondolas, 17,087; flat cars, 861; furniture cars, vehicle cars, etc., 1,621; unclassified cars, 10,519; making a total of 127,331." Then this note states that there are 34,538 refrigerator cars owned by strictly private parties. How many does your company own?

Mr. ROBBINS. Fourteen thousand.

Senator CULLOM. Fourteen thousand?

Mr. ROBBINS. Yes, sir.

Senator CULLOM. And they are controlled entirely by Armour & Co., your firm?

Mr. ROBBINS. They are owned by our firm, the Armour Car Lines.

Senator CULLOM. Just how do you run those cars? Do you lease them to the railroads?

Mr. ROBBINS. We rent the cars to the railroads on a mileage, generally.

Senator CULLOM. To the railroads, by the year?

Mr. ROBBINS. No, sir; on a mileage basis.

Senator CULLOM. Three-quarters of a cent a mile?

Mr. ROBBINS. Generally at three-quarters of a cent a mile for refrigerators.

Senator CULLOM. Going and coming, loaded or unloaded?

Mr. ROBBINS. Yes, sir.

Senator CULLOM. Do you have any control over the product that is in those refrigerator cars?

Mr. ROBBINS. The car lines do not; no, sir—none whatever.

Senator CULLOM. They have nothing to do with them after loading them?

Mr. ROBBINS. The car lines have no connection whatever with the contents of the car, except in the case of fruit business, to see that the fruit is properly loaded so as to be susceptible of good refrigeration.

Senator CULLOM. Armour & Co. are understood to be shippers and packers of beef and all that sort of thing?

Mr. ROBBINS. A general packing-house business; yes, sir.

Senator CULLOM. Do they not ship any beef themselves?

Mr. ROBBINS. Yes, sir; yes, sir.

Senator CULLOM. It is their own property, is it not?

Mr. ROBBINS. Yes, sir; but a different company.

Senator CULLOM. A different company?

Mr. ROBBINS. A different company; yes, sir.

Senator CULLOM. What is that company?

Mr. ROBBINS. Armour & Co.

Senator KEAN. And Armour & Co. own the cars?

Mr. ROBBINS. No, sir; the Armour Car Lines is a separate corporation.

Senator KEAN. Who owns the Armour Car Lines?

Mr. ROBBINS. The stockholders in the two companies are to a large extent the same.

Senator CULLOM. Well, why should you have two or three companies in one?

Mr. ROBBINS. The line of business is entirely different, sir.

Senator CULLOM. Yet Armour & Co. are buying and killing and packing beef and other meats?

Mr. ROBBINS. Yes, sir.

Senator CULLOM. Are they not all shipping beef and other meats just at the same time?

Mr. ROBBINS. Armour & Co. ship; yes, sir; they do ship.

Senator CULLOM. But they do not ship in their own cars?

Mr. ROBBINS. No, sir; they do not ship in their own cars.

Senator CULLOM. They own the big end of it, a large proportion of the property, do they not?

Mr. ROBBINS. The same individuals own the stock, yes, sir; to a large extent.

Senator CULLOM. Then, whatever Armour & Co. and the other firm do, practically it is the same thing, is it not?

Mr. ROBBINS. I would not like to say that. For instance, I do not

think Armour & Co. own more than one-quarter of the cars owned by the car lines. It is just the same principle as a man being an owner in various different companies; they might have some relation to each other.

Senator CULLOM. And stock in others?

Mr. ROBBINS. Yes, sir.

Senator CULLOM. And Armour & Co. now have stock in the Armour Car Lines?

Mr. ROBBINS. No, sir; no, sir; not Armour & Co. The same individuals, to a large extent, are stockholders in both companies.

Senator CULLOM. J. Ogden Armour has stock in it?

Mr. ROBBINS. He has stock in both companies; yes, sir.

Senator CULLOM. And one of the companies does the shipping and the other company owns the property or shares?

Mr. ROBBINS. One of the parties does a part of the shipping. It uses perhaps one-quarter of the cars.

Senator CULLOM. What proportion, what share of the stock, does J. Ogden Armour own?

Mr. ROBBINS. I could not answer that; but the controlling interest in both.

Senator CULLOM. Yes; the controlling interest in both. You do not regard yourselves as in the business of shipping meats from one part of the country to the other, or anywhere, and as being under the interstate-commerce law at all, do you?

Mr. ROBBINS. Not so far as the car lines are concerned; no, sir.

Senator CULLOM. Are you, in any respect?

Mr. ROBBINS. No, sir; not the car lines; we do not consider that we are. We do not consider that we transport anything; we simply lease cars to the railroads.

Senator CULLOM. The railroads transport these cars?

Mr. ROBBINS. Yes, sir.

Senator CULLOM. Are not the cars under the supervision of the interstate-commerce law and Commission, then?

Mr. ROBBINS. The rates on the products in the cars, no doubt, are under the supervision of the Commission, but we do not think the cars themselves are.

Senator CULLOM. Because you simply own them and rent them?

Mr. ROBBINS. We own them and rent them to the railroads. We do not transport anything.

Senator CULLOM. You do not run them; you regard yourselves in pretty much the same attitude as the Pullman Company regard their palace cars?

Mr. ROBBINS. Almost identically, sir; yes, sir; or the same as the Car Trust Company, who may furnish cars to a railroad.

Senator CULLOM. What objection have you to your cars and everything that you ship being put under the interstate-commerce law, if they are not there now?

Mr. ROBBINS. We do not think that they can be considered as carrying on interstate commerce in any way; and even if the courts should decide that it was an actual part of interstate commerce, we dislike to have our private business supervised by a public body, particularly in view of the inclination of opposition that the Commission have shown toward us.

Senator CULLOM. Here is the statement of this Mr. Ferguson, whom you have been referring to frequently in your paper. I see he charges your company with taking rebates in one way and another.

Mr. ROBBINS. I denied that in my statement, and I would like to deny it again in the most sweeping way—that the car lines are not used as any device in any way, shape, or manner for the payment of rebates.

Senator CULLOM. What is his basis for charging you with taking rebates?

Mr. ROBBINS. I do not know.

Senator CULLOM. He says here, in answer to Mr. Newlands:

"Mr. FERGUSON. Senator Newlands, may I finish answering the question as to rebates first and then answer you?

"Senator NEWLANDS. Certainly.

"Mr. FERGUSON. I am pretty nearly through with respect to the rebate feature. I wanted to lead up to it by showing how the use of the cars was forced. I have shown you what previous refrigerator charges were. That ought to be accepted, and I think it must be accepted, as the maximum cost of the service, or the railroad companies would not have provided the service for that amount."

You say you do not take any rebates in any way, shape, form, or manner?

Mr. ROBBINS. No, sir. I would like to be permitted to say, in that connection, that since the passage of the Elkins law, and later, the injunction, orders were given by Armour & Co. and by the Armour Car Lines to pursue no illegal practices in that connection in any way, shape, or manner; and that plan has been followed to the letter.

Senator CULLOM. You spoke a while ago of the Pere Marquette matter, and intimated that that was the most difficult thing you had to contend with, or words to that effect. What did you mean by that, and what was the trouble?

Mr. ROBBINS. As I explained, I think, the reason was that that business generally requires a partial refrigeration. It is in a cool climate, late in the season, and refrigeration might pass there that in other districts, like the Carolinas or Georgia, would not do at all. Further, he makes out that we were responsible for the advance in those rates, whereas, as I explained, it was due to a change in the rule on the part of the railroad. Previously they furnished ice free. They changed that rule so that they charged for the ice. We added that difference in cost to us to our rates, so that our profit was not increased by the increased rate.

In regard to these rebates I would like to say that I consider the present law as broad as it is possible to make it to prevent any rebates, if there are any.

Senator CULLOM. You mean the Elkins law, especially?

Mr. ROBBINS. Yes, sir.

Senator CULLOM. This question of the amount of ice used and the bills for ice apparently constitutes the ground of a good deal of complaint against the private car companies in shipping fruits and meats that have to be refrigerated. What is the largest amount of ice you have to use in shipping between Chicago and New York or Boston?

Mr. ROBBINS. I would like to answer that in the abstract, in a crude way, by saying that there is just as much difference in refrigeration as there is difference in horses; that you can not fix a price on one

any more than you can fix a universal price on the other. In the case of lots of these railroad cars in which Mr. Ferguson showed the cost of the ice only the tanks have less than half the capacity of ours. Our fruit cars have a capacity of about 10,000 pounds each, which we believe is necessary.

Senator CULLOM. Ten thousand pounds of what—of ice?

Mr. ROBBINS. Ten thousand pounds of ice capacity per car.

Senator CULLOM. Do you put in all the ice they will hold?

Mr. ROBBINS. Yes, sir; and we not only have our own inspectors at these various icing stations, but sometimes the shippers themselves have a traveling man around to see whether it is actually being done; and I do not know of a complaint ever having been made that we stinted the ice.

Senator CULLOM. Suppose you were required to give up your ownership of private cars and let the railroads furnish them, what would be the effect on the business?

Mr. ROBBINS. I have given at some length the experience of the California people; and before the House committee there were a number of shippers who testified as to their experience before we furnished the refrigeration, when they were dependent on railroad cars and any kind of cars they could get. The result was that they got neither sufficient cars nor suitable cars for the business and were unable to get their products to market in proper condition; and they were not only willing but anxious for our service to be continued, and at our present rates.

Senator CULLOM. So that, in your opinion, as to the fruits and meats that we now have transported from one part of the country to the other in refrigerator cars, if private ownership was not continued it would result in much of the material that you now ship coming to to that condition?

Mr. ROBBINS. I think it would be a serious blow to the sections producing highly perishable fruits, berries, etc.—very serious.

Senator CULLOM. Have you had any complaints from California, from these regions where fruits are supplied?

Mr. ROBBINS. As to the rates?

Senator CULLOM. Yes; and accommodations, and all that.

Mr. ROBBINS. I think there are no complaints on the service. There was a complaint filed, I think in 1899 or 1900, before the Interstate Commerce Commission, with respect to both the freight rates and the refrigeration rates; and while we demurred as to the refrigeration rates on the ground that they had no jurisdiction, they finally decided here very lately that the evidence did not show the refrigeration rates to be unreasonable, which I understand disposes of that case.

Senator CULLOM. Who decided it, do you mean—the courts?

Mr. ROBBINS. The Interstate Commerce Commission.

Senator CULLOM. The Commission?

Mr. ROBBINS. Yes, sir.

Senator CULLOM. That they were not unreasonable?

Mr. ROBBINS. That they were not unreasonable.

Senator CULLOM. I believe you said you published your rates?

Mr. ROBBINS. Yes, sir.

Senator CULLOM. Are these rates published so that anybody who has anything to ship can secure them?

Mr. ROBBINS. Yes, sir; we publish from 500 to 1,000 copies of a tariff in each district.

Senator CULLOM. And what does this publication contain?

Mr. ROBBINS. It simply shows our rates, or charges, rather, for refrigeration, in case shippers desire their shipments to be refrigerated.

Senator CULLOM. Do you limit the amount of ice that you put in the car?

Mr. ROBBINS. Does it give the amount of ice, you say?

Senator CULLOM. How do you find out what it will cost, if you do not state how much ice you will put in?

Mr. ROBBINS. We estimate the cost of the various items which go to make up the service. I would like it to be understood that that does not include ice alone. It includes the expense of the men in the district who are looking after the business; it includes something for supervision en route.

Senator CULLOM. You say, "in the district." What do you mean by that—the place where you start it?

Mr. ROBBINS. Yes, sir; and supervision of the product en route to market. It allows something for contingencies and claims and something for profit. If, as has been demanded by some of these commission men, that refrigeration should be provided at the cost of ice, we would retire from the business; there would be nothing left in it for us to care for.

Senator CULLOM. Now, that bill is handed to the shipper, or to the railroad that transports the product?

Mr. ROBBINS. The railroad follows the charge on its billing, as a rule, and collects it in connection with its freight rate, and then finally pays it to us again. Generally the shipper does not care to pay the refrigeration; he wishes it to be collected with the freight charges, so that it is followed.

Senator CULLOM. So that the whole expense of transportation, including refrigeration and everything else, is collected by the railroad company?

Mr. ROBBINS. Is collected by the railroad company; the refrigeration part for our account.

Senator CULLOM. Do you often have any trouble with the shipper on the question of the size of the bill?

Mr. ROBBINS. No, sir. We, I think, have had no trouble at all in that connection until this past season, when two or three of these middlemen, these commission men, who had been fighting us, refused to pay any refrigeration charges on the ground that the charge was unreasonable. It was shown that one of them had handled the car on commission and that he had charged the shipper with the refrigeration, although he had not paid it to us, and we sued him for the refrigeration and got judgment for it. The shipper admitted knowing what the refrigeration charge was to be, and made the shipment with the expectation that it would be paid, and asked the commission man to pay it; but the commission man refused to do so. We have had, I think, four or five such cases which they have brought as a test, and they have been defeated in every one of them so far. Generally speaking, there is no trouble in that respect.

Senator CULLOM. You get along with your customers just as the railroad gets along with its customers?

Mr. ROBBINS. We claim to satisfy 80 to 90 per cent of the actual growers and shippers. It is the receivers, the middlemen, that are, practically speaking, our opponents in this matter.

Senator CULLOM. Do these middlemen get in as middlemen in the shipment of meats?

Mr. ROBBINS. No, sir. They do somewhat in the shipment of butter, eggs, and poultry, in which we deal, and that is, I think, very largely one of the reasons why they are trying to make us trouble in this car matter. But we engaged in that butter, egg, and poultry business before we engaged in the fruit-car business. That had nothing whatever to do with it, and we do not solicit or handle other people's shipments of butter, eggs, and poultry.

Senator CULLOM. Are you engaged in shipping anything except that which requires refrigeration—special care in that way?

Mr. ROBBINS. Yes, sir.

Senator CULLOM. What else?

Mr. ROBBINS. In the winter months, or in the dull months, particularly from California, we furnish cars for oranges, about half of which are shipped under refrigeration and the other half are shipped without ice. When the cars reach a cold climate the ventilators are closed and they run through as frost-proof cars.

Senator CULLOM. They do not require refrigeration any more than the weather does in the winter time, I presume?

Mr. ROBBINS. Well, they sometimes do refrigerate certain products, even in cold weather. It preserves a more even temperature and delivers them in better condition at the market.

Senator CULLOM. Do you think you would fare any worse if you were under the interstate-commerce law by virtue of any amendment Congress might make to it than you do now?

Mr. ROBBINS. Yes, sir; I think we would. I think we would fare much worse. The disposition of the Commission, as far as shown, has been to make rates under which we could not do business.

Senator CULLOM. They make them so low?

Mr. ROBBINS. Yes, sir.

Senator CULLOM. They have not had cases enough with you to find out how much it costs, have they?

Mr. ROBBINS. As I explained, we could not do the business for the cost of the ice, and that is what they seem to think is one way of measuring the value of the service.

Senator CULLOM. I make these inquiries, Mr. Robbins, for the reason that there is, apparently, a public sentiment in favor of putting these private cars all under the interstate-commerce act, and I want to find out what you think about the reason why it should not be done.

Mr. ROBBINS. I am aware of a certain public sentiment in that direction, but my opinion is that it does not come from the growers and the shippers, the people who use these cars and pay for the refrigeration.

Senator CULLOM. It comes from the people who are not interested in the traffic?

Mr. ROBBINS. It comes from the people that are interested only indirectly—generally only as receivers. We claim that we do the business better that anybody else and charge only a reasonable rate considering the service.

The committee thereupon adjourned until to-morrow, Tuesday, *May 16, 1905*, at 11 o'clock a. m.

The following telegram and letters are, by direction of the committee, printed as a portion of to-day's proceedings:

PELHAM MANOR, N. Y., *May 15, 1905.*

Hon. S. B. ELKINS,
Chairman Senate Committee on Interstate Commerce,
Washington, D. C.:

Have no names other than those for whom appointments have been made. Will be pleased to appear before committee to-morrow morning.

E. P. BACON.

OFFICE OF E. B. BALDWIN,
Marshallville, Ga., May 5, 1905.

Senator STEPHEN B. ELKINS,
Washington, D. C.

DEAR SIR: Seeing that the Senate Committee on Interstate Commerce intend taking up the private car line question between the 15th and 20th of this month, we, as shippers, feel inclined to address to you a short communication relating to the matter.

We, the undersigned, with many others, are largely interested in peach growing in this State, and wish to say that since the Armour Car Line has alone been doing the work in this section we have had much better service at their hands, in a sufficiency of cars and ice and prompt handling of our shipments, than when we were served by a number of competing lines, as then we were at times forced to buy ice for some of the lines; but since the Armour Car Line has been in charge of our shipments we have had prompt service and a sufficiency of ice at all times during the shipping season. As to whether their rate charged for services rendered be just and equitable or not we are not prepared to say. We can only say that they reduced their rate from $90 per car to New York to $68.75 per car; and since that time we have, generally speaking, been receiving profitable returns for our fruit.

Therefore we hope there will be nothing done that will disorganize our present arrangements, unless it may be something that gives better service at a less rate of tariff.

Respectfully,

E. B. BALDWIN,
W. P. BALDWIN,
I. F. MURPH,
MURPH & BALDWIN,
L. A. RUMPH,
RUMPH & MOORE,
J. E. HASLAM, Sr.,
F. B. & J. S. MURPH,
SAMUEL H. RUMPH.

MACON, GA., *May 9, 1905.*

Senator STEPHEN B. ELKINS,
Chairman, Washington, D. C.

DEAR SIR: As a grower of peaches and plums, I write to ask that you do what you can for the fruit growers of Georgia in the way of transportation.

I have about 155,000 fruit trees and expect to ship 50 to 65 cars of fruit this season, and a great many more than this each year from now on when we have a crop.

I have been shipping by the Armour Line for several years and have found this line quite satisfactory, and I think their charges reasonable for the service rendered.

I have no interest whatever in any railroad company, but simply write as a grower to ask that, until you can legislate to give us better shipping facilities and better service every way, do not handicap the present lines, as it takes thousands of refrigerator cars and the best of management to put Georgia's fruit crop on the markets promptly and in good condition.

Yours, truly, E. J. WILLINGHAM.

LAW OFFICE OF JOHN T. WEST,
Thomson, Ga., May 10, 1905.

Hon. STEPHEN B. ELKINS,
Chairman Senate Committee on Interstate Commerce,
Washington, D. C.

DEAR SIR: I have been requested by Mr. I. M. Fleming, general southeastern agent for the Fruit Growers' Express, to write to you and give you my experience as a fruit grower in having my fruit handled by the cars of the Fruit Growers' Express.

I am comparatively a small grower. I have about 30,000 bearing peach trees. I shipped something like 25 or 26 cars last year and the outlook is that I will ship about the same quantity this year.

Last year I was able to get all the cars I needed promptly, and the cars always came here to the shipping point well iced, and I had no complaint from my commission men that any of the cars showed a lack of proper icing, and the service was satisfactory to me so far as the handling of my fruit was concerned.

I think at the rate charged that the minimum number of cases is too high, requiring the shipper to put more cases in a car than will usually carry properly. To put in the minimum number requires the loading of the car one tier higher than it should be, and I think with the same rate that the company ought to reduce the minimum.

I have been shipping fruit since 1897, and must say that the service given by the Fruit Growers' Express has been more satisfactory than was the service by the railroads prior to the contract between the Fruit Growers' Express and the railroads by which the shippers were given the Fruit Growers' Express cars. In the very nature of the business I should think that the Fruit Growers' Express could give better service than could most, if not all, of the railroads. Take the Georgia Railroad, for instance. There are a limited number only of cars shipped on its road—speaking of the Georgia Railroad strictly and not as to the lessee roads which control it—the shipments being too small to justify this road in equipping itself with the necessary cars and icing stations, and preparing to get what ice it needed, and I should think the same would apply to nearly all of the roads in more or less degree. The Fruit Growers' Express, having cars equipped for handling all kinds of fruit and vegetables, can put its cars into Florida for vegetables as the season requires, bringing them into Georgia when needed and following the season and the fruit into North Carolina, Virginia, Delaware, etc., while

no single railroad, in all probability, could use such cars along its lines practically all the year as does the Fruit Growers' Express by supplying all roads and not being confined to any one.

I have, in years past, had some complaint about the icing of my cars, but I think that was when the cars were being handled by the railroads and before the contract with the Fruit Growers' Express, and I am glad to say that of recent years I have had no such complaint, and the service has been all that one could reasonably expect—that is, with myself—and I think the same applies to the other shippers from this point, and beyond the fact that I think the minimum number of cases is placed too high, the service to myself has been entirely satisfactory.

Yours, truly, JOHN T. WEST.

TUESDAY, *May 16, 1905.*

The committee met pursuant to adjournment.

Present: Senators Elkins (chairman), Cullom, Kean, Dolliver, Foraker, and Clapp.

Senator DOLLIVER. Mr. Chairman, I want to ask leave to have printed in to-day's proceedings an article taken from the Fort Dodge (Iowa) Messenger, written by Hon. L. S. Coffin, who was for some time a railroad commissioner in Iowa, and in later years interested in the enactment of the safety-appliance legislation; indeed, I think he may be said to be the author of the safety-appliance law, in so far as any one man may be said to have originated that legislation. The article is upon the general subject, "Who shall do the railroad business?" and is a brief discussion of the question from the standpoint of a representative Iowan.

The CHAIRMAN. Without objection, it will go into the record.

The article referred to is as follows:

WHO SHALL DO THE RAILROAD BUSINESS?

This is a very simple question and a very innocent one. Still the fact that almost every paper in the nation is discussing it shows that there must be more to it than at first sight appears on its face. Railroads are here to stay. One thing should be self-evident, and that is the interest of the roads and the communities they serve are identical. Hence it is of the first importance that there should be the most friendly feeling between the two parties. The ablest railroad men strive to make friends with all the public they serve. This is so plain that it needs no argument to establish it. Here is another position which should always be considered: Railroads are the most gigantic equalizers the world has ever known. There is a vast meaning to this last proposition. This can be best shown by a little bit of history. Some forty years ago the agricultural papers announced the fact that a shipment of butter from Davenport, Iowa, and a shipment of butter from central New York, and a shipment of like laden from St. Albans, Vt., was brought into Boston in the same car, and the freight rate paid on the butter from St. Albans and from central New York was as much on each as on that from Davenport, Iowa. That newspaper article gave the writer a text from which to preach the gospel of tame grass, stock raising, and dairying in Iowa. Here was the most flagrant discrimination against the dairymen of New York and St. Albans, Vt., that could well be thought of. But I never heard a word of complaint from an Iowa farmer and dairyman, nor did I ever learn of an Iowa paper saying anything against the railroads for this flagrant discrimination.

This is what is meant by saying the railroads are the greatest and most gigantic power for equalizing the conditions of widely separated communities the world has ever seen. Iowa stands to-day as the foremost State in agricul-

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Washington, D. C.

DEAR SIR: I have been requested by Mr. I. M. Fleming, general southeastern agent for the Fruit Growers' Express, to write to you and give you my experience as a fruit grower in having my fruit handled by the cars of the Fruit Growers' Express.

I am comparatively a small grower. I have about 30,000 bearing peach trees. I shipped something like 25 or 26 cars last year and the outlook is that I will ship about the same quantity this year.

Last year I was able to get all the cars I needed promptly, and the cars always came here to the shipping point well iced, and I had no complaint from my commission men that any of the cars showed a lack of proper icing, and the service was satisfactory to me so far as the handling of my fruit was concerned.

I think at the rate charged that the minimum number of cases is too high, requiring the shipper to put more cases in a car than will usually carry properly. To put in the minimum number requires the loading of the car one tier higher than it should be, and I think with the same rate that the company ought to reduce the minimum.

I have been shipping fruit since 1897, and must say that the service given by the Fruit Growers' Express has been more satisfactory than was the service by the railroads prior to the contract between the Fruit Growers' Express and the railroads by which the shippers were given the Fruit Growers' Express cars. In the very nature of the business I should think that the Fruit Growers' Express could give better service than could most, if not all, of the railroads. Take the Georgia Railroad, for instance. There are a limited number only of cars shipped on its road—speaking of the Georgia Railroad strictly and not as to the lessee roads which control it—the shipments being too small to justify this road in equipping itself with the necessary cars and icing stations, and preparing to get what ice it needed, and I should think the same would apply to nearly all of the roads in more or less degree. The Fruit Growers' Express, having cars equipped for handling all kinds of fruit and vegetables, can put its cars into Florida for vegetables as the season requires, bringing them into Georgia when needed and following the season and the fruit into North Carolina, Virginia, Delaware, etc., while

no single railroad, in all probability, could use such cars along its lines practically all the year as does the Fruit Growers' Express by supplying all roads and not being confined to any one.

I have, in years past, had some complaint about the icing of my cars, but I think that was when the cars were being handled by the railroads and before the contract with the Fruit Growers' Express, and I am glad to say that of recent years I have had no such complaint, and the service has been all that one could reasonably expect—that is, with myself—and I think the same applies to the other shippers from this point, and beyond the fact that I think the minimum number of cases is placed too high, the service to myself has been entirely satisfactory.

Yours, truly, JOHN T. WEST.

TUESDAY, *May 16, 1905.*

The committee met pursuant to adjournment.

Present: Senators Elkins (chairman), Cullom, Kean, Dolliver, Foraker, and Clapp.

Senator DOLLIVER. Mr. Chairman, I want to ask leave to have printed in to-day's proceedings an article taken from the Fort Dodge (Iowa) Messenger, written by Hon. L. S. Coffin, who was for some time a railroad commissioner in Iowa, and in later years interested in the enactment of the safety-appliance legislation; indeed, I think he may be said to be the author of the safety-appliance law, in so far as any one man may be said to have originated that legislation. The article is upon the general subject, "Who shall do the railroad business?" and is a brief discussion of the question from the standpoint of a representative Iowan.

The CHAIRMAN. Without objection, it will go into the record.

The article referred to is as follows:

WHO SHALL DO THE RAILROAD BUSINESS?

This is a very simple question and a very innocent one. Still the fact that almost every paper in the nation is discussing it shows that there must be more to it than at first sight appears on its face. Railroads are here to stay. One thing should be self-evident, and that is the interest of the roads and the communities they serve are identical. Hence it is of the first importance that there should be the most friendly feeling between the two parties. The ablest railroad men strive to make friends with all the public they serve. This is so plain that it needs no argument to establish it. Here is another position which should always be considered: Railroads are the most gigantic equalizers the world has ever known. There is a vast meaning to this last proposition. This can be best shown by a little bit of history. Some forty years ago the agricultural papers announced the fact that a shipment of butter from Davenport, Iowa, and a shipment of butter from central New York, and a shipment of like laden from St. Albans, Vt., was brought into Boston in the same car, and the freight rate paid on the butter from St. Albans and from central New York was as much on each as on that from Davenport, Iowa. That newspaper article gave the writer a text from which to preach the gospel of tame grass, stock raising, and dairying in Iowa. Here was the most flagrant discrimination against the dairymen of New York and St. Albans, Vt., that could well be thought of. But I never heard a word of complaint from an Iowa farmer and dairyman, nor did I ever learn of an Iowa paper saying anything against the railroads for this flagrant discrimination.

This is what is meant by saying the railroads are the greatest and most gigantic power for equalizing the conditions of widely separated communities the world has ever seen. Iowa stands to-day as the foremost State in agricul-

ture because of this very discrimination. When railroads first began to touch Iowa, and began to span its fertile soil with its bands of iron, the wise managers of these roads saw that the only way Iowa could be developed so as to give the monstrous business she now has was to discriminate largely in her favor and put her on a level as to freight rates with localities 500 or 1,000 miles nearer the great marts of the nation and of the world as to that matter. Was it wise to do this? There is no cast-iron rule by which to fix a uniform schedule of rates and as so much per ton per mile for all commodities and all communities. I will say right here I have no sympathy whatever in the idea of a commission unlearned in railroad business to fix rates. On every great railroad system there will always be a thousand and one small industries as well as large that must have discriminating rates to be born into business and sustained when born. These industries would be a great help to the localities where they might be, and even at a low rate of freight be of some help to the roads by giving them some profit which would help make the general rate for main traffic less for all. How little a commission would know as to these small industries; small I say, as to each one, but in the aggregate on a large system of great proportions to the communities where they arise and to the railroads. I meant to have said a commission of politicians, for that is surely to be what the Commission will be composed of if created. There is so much of this on any one of our great systems as to keep a commission busy the year round, and we should have to create about as many commissions as we have large systems of railroads.

There is no class of men who can do this as old, long-experienced railroad men. For this work the companies pick out their best men. I would have all these discriminating rates as open to the public as the sun. I would not claim that the roads are free from all faults and mistakes. Railroad managers are human and just like us whom they serve. They can not just yet, it may be, do as they would like to do by many localities, for the great captains of vast industries and trusts have gotten them, for the time being, by the throat, and the many things we sometimes complain of should be laid to the door of these greedy corporations, who have the roads bound hand and foot for a time. Could we have a law forbidding the owners of these giant industries from owning stock in any railroad, then we should have gone a long way in the direction of solving the railroad problem. I hope the day will never come when the Government in this nation will feel it a duty to take over the lines of railroad transportation to itself. Should it come, I fear that it would be the knell of popular government by a free people. The Government employees would then, with those now in that class, be the balance of power to such a degree that no administration could be changed only by revolution. The patronage of the Government is now enormous, and its employees exert a great influence in our national elections. Every man to his niche, or, in other words, every man to his trade. Men are born with a trend and a capacity when developed for certain lines of industries. Don't take men from the legislature, or from Congress, or from professorships of schools, or from the shops, nor from the plow to run railroads and to undertake the most difficult problem—that is, making out a perfect schedule of rates that will fit all localities and all commodities. There is no class of business men more sensitive to public sentiment than the managers of our railroads, and no class who are more anxious to be in harmony with the people they serve. Public sentiment with the most of these men is stronger than the law.

We should always bear in mind that the railroad manager stands between two fires, the stockholders and the board of directors on the one side and the public on the other. The managers see things that should be done for the people, but it must be brought before the board of directors, and sometimes it takes months, even years, to convince the board of the real necessity of the change. But I hope that those who do me the honor of reading this article will bear in mind this one proposition, which I made at the start, viz, that the railroads are the great equalizers, and that they will study the great meaning contained in the sentence. By a wise discrimination it makes my farm, which is a thousand miles farther from the great markets of New York and Boston, worth as much for dairying as farms in New York or Vermont. I can be as prosperous, can school my children as well, and they can be as intelligent as the children of the farmers living near those great markets. This field of railroad rates is a wide one and should be gone over with a sincere desire to find the true mean, so that justice shall result to all. But the public mind is so liable to be prejudiced in favor of itself. Strange as it may seem, there is many a good man otherwise

who thinks it no sin to beat a railroad. When we were little, fifty years ago, we were all glad enough to get down on our knees and beg the roads to come to Iowa, and we would give them a mighty bonus.

They came, and by their presence and help Iowa has been made rich. Some of us remember the days when butter brought only from 3 to 6 cents a pound and was bought by merchants and dumped into barrels and marked "western grease." Dressed hogs sold for the great sum of 1½ cents a pound. Cows sold for from $5 to $8 a head. All know how it is now. What has made the change possible? Railroads, with their discriminating rates in our favor but against farmers of the Eastern States. We want this same thing to go on. We want the farmers a thousand miles away from a great market to be as prosperous and his children have the same and as good facilities for intelligence as the children of farmers only a hundred miles away. For the present we know of no instrumentality so potent as the railway transportation to bring these desirable things about. But to do this very desirable work we must not tie them down to cast-iron rules as to no discrimination of rates for the far-away farmer and his family. To discriminate between two shippers in the same locality and to the same point, just because one sends a hundred cars while the other, as yet, can only send ten is a discrimination that should be frowned down both by law and public sentiment back of the law. There should be no wholesale rates as against retail rates. No more so than in buying postage stamps.

L. S. COFFIN.

CONTINUATION OF STATEMENT OF MR. GEORGE B. ROBBINS.

The CHAIRMAN. You are the president of what is called the Armour Refrigerator Car Company, I believe?

Mr. ROBBINS. The Armour Car Lines.

The CHAIRMAN. How many cars have you, and what is their value?

Mr. ROBBINS. We have about 14,000 cars and other investments in icing stations, car shops, and other equipments.

The CHAIRMAN. You are incorporated under the law of what State?

Mr. ROBBINS. The State of New Jersey.

The CHAIRMAN. And what is the value of your investments?

Mr. ROBBINS. About $15,000,000.

The CHAIRMAN. Please state, approximately, how many contracts you have with railroads for operating your cars.

Mr. ROBBINS. For the ordinary business, such as the beef and packing-house business, as a rule we have no direct contracts with the railroads. Our cars are rented by them upon a mileage basis; that is an understood basis, and settled month by month and year by year.

The CHAIRMAN. What is the amount of that mileage compensation—1 cent, or what?

Mr. ROBBINS. About three-fourths of a cent a mile. In the through-car business we have quite a number of what are called exclusive contracts with the railroads, perhaps twenty or thirty, I do not remember exactly, and most of the through business we handle is under those exclusive contracts. The nature of those contracts is that we agree to furnish suitable cars for the purpose required, all the cars and all the ice required, or, in the event of failure to comply with our part of the agreement, we respond in damages for the losses which may result.

The CHAIRMAN. You say "exclusive contracts;" that is, you are exclusively to furnish these private cars for the railroads?

Mr. ROBBINS. The railroads agree, on their part, to use our cars

only for the particular business that is involved, which is generally fruit or berries, and that leaves them free to employ the cars of any other company.

The CHAIRMAN. How many of those exclusive contracts have you?

Mr. ROBBINS. Say 25 or 30.

The CHAIRMAN. Under the terms of those 25 or 30 contracts the railroads do not allow any other private car company to engage in business on their lines?

Mr. ROBBINS. Not in the particular business involved which originates on their line.

The CHAIRMAN. And that provision was included in this particular Pere Marquette Case?

Mr. ROBBINS. Yes, sir.

The CHAIRMAN. Would this contract exclude other refrigerator cars that might come on other connecting lines?

Mr. ROBBINS. It would exclude them for the particular business involved, which, in the Pere Marquette Case, is substantially the peach business.

The CHAIRMAN. Are these contracts made public, or are they just between you and the railroads and not made public?

Mr. ROBBINS. They are generally private contracts, though whenever they are called for I think our contracts have always been exhibited. And there are several of them, I believe, which have been exhibited to the Interstate Commerce Commission at its request, and one of them was introduced here by Mr. Ferguson. There is nothing specially private about them; they are simply plain business agreements.

The CHAIRMAN. The Armour people, as I understand, have contracts with 25 or 30 roads to operate their cars to the exclusion of other cars. In operating these cars do you haul Armour productions often? That is, do the Armour people own largely the traffic that is hauled in these cars?

Mr. ROBBINS. No, sir; the Armours do not own or have any interest in the products hauled.

The CHAIRMAN. Or with any railroad you have these contracts with?

Mr. ROBBINS. No, sir. I want to explain that as I explained it in my statement of yesterday.

The CHAIRMAN. If you covered that particular point, that will be sufficient.

Mr. ROBBINS. I explained that in my statement fully.

The CHAIRMAN. This is what I want to get: Do the Armours, by reason of being owners of refrigerator cars, get any privileges over other people who have to ship like productions in competition with them?

Mr. ROBBINS. In the products carried in our cars covered by these exclusive contracts the Armours have no ownership in any shape or manner.

The CHAIRMAN. As I understand, the Armour Company own the refrigerator cars, which might be regarded as a sort of traveling stores on wheels?

Mr. ROBBINS. The cars themselves are such traveling cold-storage warehouses; yes.

The CHAIRMAN. The products in them being owned by your company?

Mr. ROBBINS. The packing-house products loaded in the cars of the Armour Car Lines are generally owned by Armour & Co., a separate corporation.

The CHAIRMAN. In that ownership of the product and the cars, is there not some privilege or advantage that you enjoy over other shippers?

Mr. ROBBINS. I think not; I think every packing-house shipper has his own cars, and I further claim that the revenue received for the use of those cars is only a fair return on the investment, considering the vicissitudes of the business and the depreciation.

The CHAIRMAN. If a shipper had no cars of his own and wanted to ship meat products or packing-house products he would be at an evident disadvantage, would he not?

Mr. ROBBINS. I doubt it; we frequently loan our packing-house cars to our neighbors.

The CHAIRMAN. But not when it would be to your interest to keep them?

Mr. ROBBINS. If we have a sufficient number on hand we let them have them.

The CHAIRMAN. Certainly, because you get a rental for them.

Mr. ROBBINS. Yes.

The CHAIRMAN. But you do not go so far as to let them have them if you need them?

Mr. ROBBINS. We would not be likely, if we needed the cars, to loan them to shippers who might have their own cars or could get cars from the railroads.

The CHAIRMAN. I believe you stated yesterday that you did not believe it would be well to subject a private car company—the Armour and like companies—to the provisions of the interstate-commerce law.

Mr. ROBBINS. I so stated in answer to a question from Senator Cullom, and I should like to add to my answer the following:

We consider our business as incident to, but not a part of, interstate commerce, and we properly object to having our business singled out for regulation when a large number of other lines of business should be included for the same reasons, until most of the business of the country would be in one way or another considered a part of transportation. I refer to such businesses as drayage and cartage companies, cab companies, telegraph and telephone companies, union depot companies, wharfage companies, companies engaged in furnishing meals to interstate travelers, coal companies supplying coal to locomotives hauling interstate freight; also bonding and car trust companies, who build cars and lease them to the railroads, and many similar businesses. Indeed, you might include the commission merchants themselves, who furnish cartage in connection with the interstate shipments before same reach final destination.

The present interstate-commerce law states that the term "transportation" shall include all instrumentalities of shipment of carriage. If our renting cars to railways or refrigerating contents thereof by furnishing ice at local points, as explained in my statement yesterday, are "instrumentalities of shipment or carriage," then,

under the plain terms of the act to regulate commerce, the car lines and the businesses of the companies as above mentioned are already under the jurisdiction of the Interstate Commerce Commission. I am informed, however, by our legal department that the question of whether the services we render are "instrumentalities of shipment or carriage" is one to be determined by the judicial and not the legislative branch of the Government, and for the legislative branch of the Government to single out and specify our particular business by passing a law putting it alone under the jurisdiction of the Interstate Commerce Commission and excluding businesses similar to those mentioned would also be open to judicial review.

The CHAIRMAN. A great many kinds of business that you enumerate there are subject to municipal regulation, and in the most positive way, even to fixing the prices of street-car service and telephone service.

Mr. ROBBINS. In the same way the price of ice in some localities might be regulated.

The CHAIRMAN. You consider that the railroad is a common carrier, but you are only acting as a merchant?

Mr. ROBBINS. We are a renter of cars to railroads.

The CHAIRMAN. But you are a merchant; you sell goods.

Mr. ROBBINS. We are what is generally known as a "private car line." It might be termed a merchant; it is a private business.

The CHAIRMAN. But while you are so closely allied with the carrier, you do not think you are a common carrier?

Mr. ROBBINS. I think we are not. We do not transport anything.

The CHAIRMAN. If there is a loss of goods or products while in transit, who suffers the loss—the railroads?

Mr. ROBBINS. Our exclusive contracts are to furnish the railroads with all the refrigerator cars required.

The CHAIRMAN. I know, but in case of loss or damage by wreck who suffers the loss?

Mr. ROBBINS. The railroad in the case you mention.

The CHAIRMAN. Where the goods were in your cars?

Mr. ROBBINS. Yes, sir.

The CHAIRMAN. That is, if the contents of one of your cars are being shipped by you and they are destroyed by accident, the railroad suffers the loss?

Mr. ROBBINS. Yes, sir.

The CHAIRMAN. You have your redress against the railroad?

Mr. ROBBINS. The shipper makes the claim against the railroad.

The CHAIRMAN. You are the shipper?

Mr. ROBBINS. In the case of beef we might be.

Senator KEAN. You stated yesterday that you settled a great many of these cases without going to the railroads.

Mr. ROBBINS. Not in the case of beef. What I said, Senator Kean, was this: That in the event of our failure to furnish cars for certain fruit business, for which we have exclusive contracts, the failure to furnish suitable cars or ice, or to keep them reiced on the route, then the responsibility for damages is upon the car lines company.

The CHAIRMAN. The railroad undertakes to haul the products?

Mr. ROBBINS. Yes, sir; I suppose if it were followed to a finish the fruit shippers' recourse might be as much against the railroads as

against us, but under our contract with the railroad we would have to settle it with them just the same, and so, to take the short cut, we settle with the shippers direct in a case of that kind.

The CHAIRMAN. It seems that you have all the advantages of the common carrier without the responsibilities.

Mr. ROBBINS. I hardly see where all the advantages come in. We are subject to all the whims of the railroad.

Senator KEAN. You said you had 14,000 cars. How many of those are engaged in the beef business?

Mr. ROBBINS. Generally speaking, we have about 5,000 in the packing-house business and most of the balance in the fruit business.

Senator KEAN. What do you call packing-house business?

Mr. ROBBINS. Shipments of packing-house products.

Senator KEAN. Such as what?

Mr. ROBBINS. Fresh beef and packed meats.

Senator KEAN. Canned goods?

Mr. ROBBINS. Canned goods sometimes. Anything that is produced from a packing house.

Senator KEAN. Vegetables?

Mr. ROBBINS. No, sir.

Senator KEAN. Soups?

Mr. ROBBINS. Canned soups.

Senator KEAN. Soap?

Mr. ROBBINS. Yes, sir; soap might go in a refrigerator car, but no refrigeration is necessary for soap or fertilizers or a large number of things which we ship in those cars.

Senator KEAN. How many products are there that you call packing-house products?

Mr. ROBBINS. That term generally comprises meat products of all kinds. We slaughter the live cattle and hogs and the packing-house products are the result.

Senator KEAN. Can you state how many different articles?

Mr. ROBBINS. I think probably a hundred or two hundred articles are produced.

Senator KEAN. And you absolutely control the transportation of all that in private cars?

Mr. ROBBINS. There is no particular control. The practice is that Armour & Co. ship their packing-house product in the equipment of the Armour Car Lines. It is a convenience for them to do so; the cars are so built as to be suitable for that special business.

Senator KEAN. The other packing-house people have cars also?

Mr. ROBBINS. I think all of them.

Senator KEAN. Do you know how many cars Swift & Co. have?

Mr. ROBBINS. I think about 8,000 cars.

Senator KEAN. More than you have?

Mr. ROBBINS. No, sir; We have about 14,000 altogether.

Senator KEAN. Do Swift & Co. engage in renting cars to private lines also?

Mr. ROBBINS. To some extent; yes, sir.

Senator KEAN. How about Nelson Morris & Co.?

Mr. ROBBINS. They have a private car line.

Senator KEAN. Do they rent cars also?

Mr. ROBBINS. I think not, to any great extent.

Senator KEAN. Do you know of others engaged in the packing-house business who rent cars to the railroads—I mean people?

Mr. ROBBINS. I could not enumerate any others, but I think that as a matter of convenience if a packing-house man had more cars than he needed at any particular time he would rent them if he could, and I think it is frequently done by all the packers.

Senator KEAN. You do not consider that you have an undue advantage, then, in owning such cars?

Mr. ROBBINS. No, sir; I do not.

Senator KEAN. They are subject to all the rules of railroads as to safety appliances and so on?

Mr. ROBBINS. Yes, sir.

Senator KEAN. And yet you do not think they ought to be under the interstate-commerce law?

Mr. ROBBINS. No, sir; I do not.

Senator KEAN. They are engaged in interstate commerce, are they not?

Mr. ROBBINS. I think not. The product in them may be in process of interstate carriage, but the cars are no part of it.

Senator KEAN. Is it not exactly the same case as a ship or vessel engaged in transportation? The railroad owns the cars engaged in interstate commerce, does it not?

Mr. ROBBINS. Yes, sir.

Senator KEAN. And you think that because you own them your company is not engaged in interstate commerce?

Mr. ROBBINS. No, sir. Because we rent cars to any common carrier, I do not think that makes us a common carrier. I do not say at all that our not being a common carrier would not relieve the railroads of its obligations as a common carrier.

Senator KEAN. Do you mean to say that the railroads with which you have these exclusive contracts would refuse to haul other refrigerator cars?

Mr. ROBBINS. For the particular business which the contract covers, it prevents the use of other cars. I would like to explain briefly one of the necessities for that. Take, for instance, the peach business, which we move from Georgia. That is in July and August, and it is variously estimated that from 4,000 to 6,000 cars will be necessary for that business. Some two or three months ago we commenced to store ice at various points, such as Chattanooga, Atlanta, and Macon, to take care of that business, and it will keep the machines busy until harvest time to accumulate enough ice for that purpose. I claim that we could not buy and store that ice if we did not know in advance whether we were to get the business, as well as know whether we are going to get 50 per cent or 100 per cent of the business, and we could not supply the cars with sufficient ice to take care of the business. That is a plain business proposition.

Senator KEAN. Does your secret contract with the Pere Marquette road, a copy of which we have here, presented by Mr. Ferguson last winter, prevent that road from receiving a car from, say, the Merchants' Despatch Company?

Mr. ROBBINS. As to the secret contract, I think that our contract was upheld by the Interstate Commerce Commission, three or four years ago, several years at least; and in answer to the latter part of

the question, it would prevent their using an M. D. T. car for the particular business covered by the contract, which is practically the peach business.

Senator KEAN. Would that prevent the railroad from receiving a car belonging to the Merchants' Despatch from a connecting road?

Mr. ROBBINS. No, sir; not at all.

Senator KEAN. When that car was on that road, of course it could not engage in other business?

Mr. ROBBINS. Not for peach loading.

Senator KEAN. Therefore that practically excludes the Merchants' Despatch car from the Pere Marquette road because they could get no return freight.

Mr. ROBBINS. No, no. They have other freight originating on their lines, and it is frequently the case that a car would be returned empty. But it gives us the exclusive right to furnish cars for the particular business involved. Otherwise we would not send cars there to take care of it if we did not know we could get it. I may say, in that connection, that that very M. D. T. car, as I think was plainly shown in the Interstate Commerce evidence last June, is not considered a suitable car by the shippers for the peach business.

Senator KEAN. There might be other cars, say, Swift cars.

Mr. ROBBINS. If one of the Swift cars were available it would probably be suitable.

Senator KEAN. But you would not let a Swift car come on where you would not allow a Merchants' Despatch car?

Mr. ROBBINS. No, sir. If we did so, it would simply displace one of our cars, and might also displace the ice we had accumulated for the business.

Senator KEAN. Do you have icing stations independent of all the roads?

Mr. ROBBINS. As I explained in my statement yesterday, in California, Georgia, Florida, Carolina, and all the main producing sections we have our own ice for our own icing stations; put the ice in with our own labor, superintend it by our own men; and we have perhaps 50 icing stations scattered throughout the country.

Senator KEAN. Have Swift & Co. any interest in those?

Mr. ROBBINS. No, sir.

Senator KEAN. So that they get no ice from you?

Mr. ROBBINS. In some places we sell them ice.

Senator KEAN. And they sell you ice?

Mr. ROBBINS. Yes, sir; from some of their icing stations.

Senator KEAN. Is it the same with Nelson Morris & Co.?

Mr. ROBBINS. I do not believe Morris has any stations. I do not think they have ever found it necessary to put any capital in for that purpose. They can buy ice in every locality. We buy ice every month where we can do so to the best advantage.

Senator KEAN. In other words, the packers who own these cars have agreements among themselves in regard to selling ice to each other?

Mr. ROBBINS. No, sir; we charge the other packers the same as we charge any outsider for ice.

Senator FORAKER. I understood you to say yesterday that the real shippers are, as a rule, entirely satisfied with your charges and the

service you give, but that this agitation has been excited by the middleman—the commission man?

Mr. ROBBINS. Yes, sir. I claim that we satisfy 80 to 90 per cent of the actual growers and shippers on our cars.

Senator FORAKER. Who, besides Mr. Ferguson, has made complaint against your practices?

Mr. ROBBINS. Mr. Mead, a gentleman from Boston, who is also the president of a refrigerator car line, complained at great length against us before the House committee.

Senator FORAKER. Of what did he complain particularly—the icing charges?

Mr. ROBBINS. Almost everything from the charge for icing to the fact of our making exclusive contracts, and because we at one time dealt in a limited line of produce which interfered with his business.

Senator FORAKER. How do your icing charges compare with his?

Mr. ROBBINS. I do not know what his rate is. I think his is a million dollar company with one car, and so I hardly could make a comparison.

Senator FORAKER. Did not Mr. Ferguson represent real shippers when he appeared before this committee?

Mr. ROBBINS. Generally speaking, he did not.

Senator FORAKER. He gave a list of associations at the beginning of his testimony to which I call your attention.

Mr. ROBBINS. Yes, sir; I am acquainted with the facts. I think one organization had a membership of 12. One was a retail butchers' association.

Senator FORAKER. Let me take them in order. The Western Fruit Jobbers' Association; is that a shipping association?

Mr. ROBBINS. No, sir; they are receivers.

Senator FORAKER. They simply receive?

Mr. ROBBINS. They might be shippers in occasional cases, but, generally speaking, they are receivers.

Senator FORAKER. Where are they located?

Mr. ROBBINS. I think all through the Middle West.

Senator FORAKER. What do you mean by being simply receivers?

Mr. ROBBINS. As a rule, they receive products in our cars on commission—on consignment.

Senator FORAKER. And distribute?

Mr. ROBBINS. And sell for the benefit only of the grower.

Senator FORAKER. If they sell they are consignees, are they not?

Mr. ROBBINS. No, sir; in most cases they are not the owners of the stuff at all. It is shipped to them on consignment, and they account to the owner after they sell.

Senator FORAKER. They sell on commission for the real shipper?

Mr. ROBBINS. Yes, sir.

Senator FORAKER. The National Retail Grocers' Association, do you make the same comment as to that?

Mr. ROBBINS. In that connection I will say that I think they are not receivers of fruit in car loads in private cars in any case.

Senator FORAKER. What relation have they to this business?

Mr. ROBBINS. I do not think they have any.

Senator FORAKER. The Minnesota Jobbers' Association?

Mr. ROBBINS. I do not know what they are. They certainly are not people that we come in contact with.

nator FORAKER. The Lake Superior Butchers' Association, of th, Minn.?

:. ROBBINS. They are retail butchers, and not owners or even vers of fruit or products that we transport in carloads.

nator FORAKER. As to these other societies named on this list—I not take time to mention them all—you have the same general nents to make?

:. ROBBINS. Yes, sir. I think, generally speaking, they are out- and disinterested parties.

nator FORAKER. Is a man a disinterested party who is simply a nission merchant receiving consignments of goods that are trans- d in a refrigerator car? Is he not interested in the prices of and transportation?

:. ROBBINS. He may be to some extent, but I think comparatively as compared with the grower and shipper.

nator FORAKER. Mr. Furguson testified, on behalf of his clients, are shippers and whom he claimed to represent, as I understand reading his statement, that they were very seriously injured change in the charges you made for icing on shipments from igan points to Duluth, his statement being that before these ex- ve contracts, such as he put in evidence, were made with the Marquette road, your charges from Michigan shipping points uluth for transportation in refrigerator cars ranged from $5 to and that immediately thereafter you put up the price to $55 a making the net advance on the average about $45 per car. Can explain that?

r. ROBBINS. I explained fully, at great length, I think, in my ment yesterday, but I will review it if you wish. I covered that icular point very fully.

nator DOLLIVER. I would like to have him cover it again, at least r as to state whether it is so.

nator FORAKER. Yes; tell us whether that is so—whether you did ge your prices.

r. ROBBINS. I think, in the first place, Mr. Furguson did not that our rate was $5 to $15. I think he referred to railroad of small icing capacity, and with which we had nothing to do, which Michigan shippers are adopting; but they are not suit- Our rate previously was $20. The railroad rule at that time Michigan was for the railroads to furnish or pay for the initial nd the ice along the route; then they changed that rule, com- ng the shippers to pay for all the ice used. When they made change we added the difference to our rate, and that made our $55, which increased rate did not afford any more profit than we out of the $20 rate. Since that complaint, and recently, by ement with the Pere Marquette, as I explained yesterday, we been able to reduce our rate, and the Pere Marquette are going ear part of the burden of the reduction, which will amount to or $25 in some cases.

nator FORAKER. So that your rate now from Michigan points to ith will hereafter be above what?

r. ROBBINS. I think before it was about $45, and I think now it be about $37.50. That is my general recollection.

nator FORAKER. You speak about rebates, saying you do not t rebates at all.

Mr. ROBBINS. Generally speaking, we do not. I think in my statement I explained some exceptions to that rule, which we do not consider a rebate in any obnoxious sense, but it is considered as an equalization among shippers, owing to the varied conditions, and, as a condition, I think would be the subject of a hundred times more complaint than if we did not make those equalizations.

Senator FORAKER. Tell us again briefly what they were.

Mr. ROBBINS. I cite this case as perhaps the clearest example: That a barge of fruit, containing perhaps 20 cars, will come up the river to Sacramento, Cal., from various ranches and in different stages of ripeness. The owners will look at the fruit, and one will decide that his is fairly ripe, and will order it fully iced; another man will order his half iced at the first station, and another will order no ice until the car reaches Truckee, away over the mountains, where ice is cheap, and even sometimes to Ogden; and yet we at the same time, by published tariff, notified them that we would take care of these different conditions and other conditions.

Senator FORAKER. Making a special contract in each case to meet these requirements, I suppose?

Mr. ROBBINS. Yes, sir.

Senator FORAKER. Mr. Furguson tells us, at page 13 of his testimony, of a case where you granted rebates to Mr. Watson, and which Mr. Watson admitted to the extent of having received $50,000 in money per year.

Mr. ROBBINS. May I ask you to read his statement about that?

Senator FORAKER (reading):

They have their friends. That will be disclosed by reading the testimony given at the subsequent car-line hearing held in Chicago in October. For instance, it will be disclosed that Mr. Watson admitted getting about $50,000 a year out of the Armour car lines. He admitted getting this amount in the way of rebates from the private car lines. Of course they did not call it rebates. They are provided with a system that permits them to evade all these fine points. They sell the commodities transported in their cars in competition with all dealers.

I will not read it all, but have read enough to give you the point.

Mr. ROBBINS. I think I remember the conditions now. We did make settlements with Mr. Watson's company.

Senator FORAKER. Who is Mr. Watson?

Mr. ROBBINS. He was president of the Porter Brothers' Company.

Senator FORAKER. Who are they?

Mr. ROBBINS. They are a California fruit-shipping concern, but went out of the business two or three years ago. We did make adjustments with Mr. Watson such as I have described. But the thing that Mr. Ferguson refers to in particular I think he has distorted, as he has everything else. It was shown that Mr. Armour years ago was a personal friend of Mr. Watson and loaned him $50,000 on his notes, as a banking matter, having nothing whatever to do with the car part of the business. That came out in bankruptcy proceedings.

Senator KEAN. He did a banking business also.

Senator FORAKER. Whose bankruptcy business was this?

Mr. ROBBINS. It was the Porter Brothers' Company.

Senator FORAKER. They failed, did they, notwithstanding the rebates paid?

Mr. ROBBINS. Yes, sir.

Senator FORAKER. Take the charge of $45 for icing a car from any

point in Michigan to Boston. Are we to understand that that is a fair charge for the ice that is used for that purpose?

Mr. ROBBINS. Yes, sir; I consider it so. It was under the conditions that existed at that time. Of course, conditions have changed somewhat since.

Senator FORAKER. What do you charge now from Michigan to Boston—$55 I understood you to say?

Mr. ROBBINS. The old rate was $55; I think the new rate will be $45.

Senator FORAKER. Does it cost anything like $45 for ice with which to refrigerate a car from Michigan to Boston?

Mr. ROBBINS. It does for the ice, the supervision, and incidentals. I may explain, in that connection, that last year in Michigan we had to pay 36 men doing inspection and general work in connection with refrigeration.

Senator FORAKER. They go out over the lines where the refrigerator cars are used, I suppose?

Mr. ROBBINS. Yes, sir; locating in the loading districts.

Senator FORAKER. Do you count that expense in as part of the general charge?

Mr. ROBBINS. Yes, sir. It is incidental to the refrigeration.

Senator FORAKER. How many tons of ice are used in a car? Suppose you have a car that you want to send from Michigan to Boston; would that be a fair illustration?

Mr. ROBBINS. The cost of the ice is only one of the items going to make it up.

Senator FORAKER. Let us take that one item; we hear more about that than anything else. How many tons of ice would you use to refrigerate that car so as to put it in proper condition to receive fruit? I understand you have to cool it off first, so that there is a different degree of refrigeration at times. How long does it take for that car to go to Boston, how often do you reice that car, and how much ice is used altogether, and what does it cost? That is what I would like to know something about.

Mr. ROBBINS. I could not answer you, Senator, on all those details.

Senator FORAKER. You are president of the company?

Mr. ROBBINS. I am. I can say, in a general way, that the first icing of the car takes about 5 tons. That is generally done at Grand Rapids in connection with Michigan business.

Senator FORAKER. What is ice worth at Grand Rapids?

Mr. ROBBINS. The car then goes to the loading point, and is then iced again at Grand Rapids on its way back.

Senator CULLOM. Does it take 5 tons for each icing?

Mr. ROBBINS. No, sir; it takes at that reicing probably 2 or 3 tons.

Senator FORAKER. Then do you reice it once more before it gets to Boston?

Mr. ROBBINS. Yes, sir.

Senator FORAKER. Where?

Mr. ROBBINS. That would depend on the routing; it might also depend on the season of the year.

Senator FORAKER. I suppose in the winter time it would not require much ice, but I assume that this is in the summer time when peaches are ripe.

Mr. ROBBINS. I should say it would be much dependent on the weather conditions at the time.

Senator FORAKER. Do you not generally ship peaches about the time they are gathered?

Mr. ROBBINS. Yes; but I have seen them gather peaches in Michigan with the snow flying.

Senator FORAKER. How much ice would they put in the car?

Mr. ROBBINS. Full icing.

Senator FORAKER. We have 8 tons to start with; how much more do you put in before you get to Boston, assuming average weather? Do you take more than 2 or 3 tons?

Mr. ROBBINS. I think that information was all shown by my assistant, who has special charge of these matters, in the Interstate Commerce Commission case last June. I would be merely guessing at these figures.

Senator FORAKER. I would like to have your best guess. How many tons do you think you would add after you left Michigan with a carload of peaches before arriving in Boston? You go right through as quickly as you can, do you not? How many days are generally occupied in taking a carload of peaches from Michigan to the Boston market?

Mr. ROBBINS. Generally, three or four days, and it is generally iced every day.

Senator FORAKER. How much ice is added for each day? Would there be as much as 2 or 3 tons added after you left Michigan and before you arrived in Boston?

Mr. ROBBINS. I think that is about each icing.

Senator FORAKER. Then, if you added ice four times, once a day for four days, and put in 3 tons each time, that would make 12 tons on the way after you left Michigan, where you had already put in 8 tons; so that would make 20 tons altogether, would it not?

Mr. ROBBINS. Yes, sir.

Senator FORAKER. That is the outside, is it not?

Mr. ROBBINS. Yes, sir; I think that is a fair estimate.

Senator FORAKER. What is that ice worth?

Mr. ROBBINS. Generally speaking, in that territory about $2.50 a ton. I think our initial ice costs only about $2.

Senator FORAKER. The average would be about $2.50?

Mr. ROBBINS. Yes; I think so.

Senator FORAKER. So if you used 20 tons of ice you would put in altogether $50 worth?

Mr. ROBBINS. Yes, sir.

Senator FORAKER. Then, if you only got in return $45 per car you would not make much money?

Mr. ROBBINS. No; but for the $45 rate, as I explained, we are to get some help on that initial rate.

Senator FORAKER. You have to furnish these men who have to travel around?

Mr. ROBBINS. Yes, sir. I do not think that the cars would take that much ice to move the Michigan fruit business, as it sometimes moves in cool weather.

Senator FORAKER. Is it not true that those cars of peaches shipped out of Michigan to Boston do not take, on an average, more than 12

tons of ice to the car, and is it not true that those 12 tons of ice do not cost more than $2 a ton on the average, making $24?

Mr. ROBBINS. No, sir; I think every place outside of Michigan the rate is $2.50 on the route to Boston.

Senator FORAKER. That is out of your own storehouses?

Mr. ROBBINS. That is the rate fixed in that territory. Sometimes it is out of our own storehouses, and then we charge at the current rate.

Senator FORAKER. You fill your storehouses during the winter season?

Mr. ROBBINS. Yes, sir.

Senator FORAKER. Do you get ice from the lakes, or where do you get your supply?

Mr. ROBBINS. One year we shipped most of the Michigan supply from Cedar Lake, Ind. I think last year we bought most of it from a Grand Rapids ice dealer.

Senator FORAKER. Is not ice pretty cheap in Michigan in the winter time?

Mr. ROBBINS. Yes, sir.

Senator FORAKER. They have plenty of ice there for about six months in the year.

Mr. ROBBINS. Yes; it is a nice country.

Senator FORAKER. And you own these ice houses and own some of these lakes, do you not?

Mr. ROBBINS. I do not think we own any lake in Michigan; no, sir.

Senator FORAKER. Whatever charge you make for ice, that should be deducted from the $45 you charge on each car, and the rest of that charge goes toward covering the expense of employing your general superintendents, your traveling men who supervise the work, and the other incidental expenses to which you are subjected in carrying on that business. You say the railroads help bear this burden. To what extent do they help you?

Mr. ROBBINS. The statement of the Pere Marquette man before the Interstate Commerce Commission the other day was that in order to provide cheaper refrigeration they were going to pay us from $2.50 to $5 a car, generally $5 a car, out of their revenue.

Senator FORAKER. On account of what?

Mr. ROBBINS. In consideration of our adding something to it and making a lower rate.

Senator FORAKER. That they would make a contribution to that extent?

Mr. ROBBINS. Yes, sir.

Senator FORAKER. So that if you reduced the charge from $55 to $45 they would contribute?

Mr. ROBBINS. In that case they would stand half of it and we would stand half.

Senator FORAKER. My colleagues have asked you on the point of whether or not you should be put under the interstate-commerce law, so I will pass that.

Mr. ROBBINS. Before finishing I should like, if I may, to read a letter printed in the record yesterday and signed by nine of the largest fruit growers in Georgia. It was not read yesterday, and it is very short. May I read it?

Senator CULLOM. Is it in the record?

Mr. ROBBINS. It is in the record.

Senator CULLOM. That is sufficient, if it is already in the record.

Mr. ROBBINS. It is in the record.

Senator FORAKER. What page?

Mr. ROBBINS. Page 81.

Senator FORAKER. You can just call our attention to it; we simply see it. You can refer to it.

Mr. ROBBINS. I refer to it. It is dated Marshallville, Ga., May 5, 1905, and is signed by nine prominent fruit growers; and I wish to say that they are the largest peach growers in the Marshallville and Fort Valley district of Georgia, which is the principal Georgia producing section. They grow and ship more peaches a hundred times over than the commission men who have appeared in this case in the hearing before the House committee and before the Interstate Commerce Commission. The last man on the list, Samuel H. Rumph, was the propagator of the now famous Alberta peach, named for his daughter. There are now some 10,000 to 20,000 cars every year of that kind of peaches produced in that country. I mention that to show the kind of men who signed that letter.

Senator FORAKER. They say in this letter the following:

> As to whether their rate charged for services rendered be just and equitable or not we are not prepared to say.

Yet they say that they are getting prompt service, that the cars are satisfactorily refrigerated, and that the conditions are more satisfactory than ever before.

Mr. ROBBINS. If that statement is to go in, I should like the whole letter to go in in this connection.

Senator FORAKER. The whole letter is already in. There is nothing in the letter stated by them except what I have cited.

Mr. ROBBINS. It shows generally the satisfaction of the growers and the shippers.

Senator FORAKER. Are these men who sign this letter charged the same rates that others are charged who patronize you?

Mr. ROBBINS. Yes, sir; there is but one basis of rates in Georgia; no adjustments or equalizations or anything else to anybody.

Senator DOLLIVER. You spoke of the satisfaction of these fruit growers in Georgia. Is there similar satisfaction prevailing among the fruit growers in California in their relations with your company?

Mr. ROBBINS. Yes, sir; there is. And I read at considerable length yesterday a statement which included a letter from 86 per cent of the green fruit shippers from California complimenting the Southern Pacific on their having made another contract with us that is now still in force.

Senator DOLLIVER. What is the nature of that contract?

Mr. ROBBINS. The same as I have explained, that they have agreed to use our cars only, and we agreed to furnish all the cars necessary and all the ice.

Senator DOLLIVER. What provision does that contract contain in reference to the rate for icing these cars?

Mr. ROBBINS. It provides that the rates and cars shall be open and on equal terms to all, and that the rates shall not exceed a certain stipulated price.

Senator DOLLIVER. What is the maximum stipulated rate?

Mr. ROBBINS. I think the contract refers to keeping in force the tariff that was in force at that time.

Senator DOLLIVER. It leaves the power of adjusting the icing rate entirely with you?

Mr. ROBBINS. Well, yes, and no. It does provide that it shall be open to all shippers alike under the same conditions.

Senator DOLLIVER. In point of fact, is it open to all shippers alike?

Mr. ROBBINS. Yes; under the same conditions. The conditions vary very greatly in California.

Senator DOLLIVER. What is the rate for icing a fruit car from Los Angeles to Chicago, for example, and how do you get at it?

Mr. ROBBINS. The rate, I think, from Los Angeles to Chicago is either $62.50 or $65.

Senator DOLLIVER. What is that based on?

Mr. ROBBINS. That is made up of the cost of the ice, the supervision, incidentals, and a fair margin of profit.

Senator DOLLIVER. Is not that charge very greatly in excess of what it was at one time from California to Chicago and other eastern points?

Mr. ROBBINS. No, sir.

Senator DOLLIVER. Now you have the actual monopoly of this transportation from California, Mr. Robbins, have you not?

Mr. ROBBINS. No, sir; not by any means.

Senator DOLLIVER. The Southern Pacific carries no other refrigerator cars except yours?

Mr. ROBBINS. They carry no other refrigerator cars except ours for certain lines of business, but the Santa Fe are direct competitors for about two-thirds of that same business.

Senator DOLLIVER. Is not that based on a pooling arrangement between the two roads—established by agreement between the roads?

Mr. ROBBINS. Not that I am aware of.

Senator DOLLIVER. Have you had your attention called to that?

Mr. ROBBINS. I know they tried to prove that in the case which was brought up, but I have no personal knowledge on that subject.

Senator DOLLIVER. Have you any way of estimating the mileage made by any one of your cars during an average year, as a basis for ascertaining the mileage earnings of the refrigerator cars per annum?

Mr. ROBBINS. I have no figures on that subject.

Senator DOLLIVER. Does the company keep no figures that would indicate the earnings of those cars?

Mr. ROBBINS. We have figures of our own earnings, but I wish to call your attention to the fact that we are a private car line doing a private business, and our earnings, for valid reasons, I think, ought not to be exposed to the public.

Senator DOLLIVER. That is a matter for you, unless we should consider your business to be interstate-commerce business and make arrangements to get public access to your methods of transacting business. That is a question we have to deal with.

Mr. ROBBINS. Yes.

Senator DOLLIVER. Have you any objection to stating the average mileage of those cars in the course of a year, according to your books?

Mr. ROBBINS. I would rather not go into the question of earnings.

Senator DOLLIVER. Is there any reason you know of why your earnings should be less public than the earnings of a railway company engaged in transporting merchandise?

Mr. ROBBINS. Just as I think that our earnings should not be public any more than those of any other private company.

Senator DOLLIVER. Is your company a private company in any sense that a railroad is not a private company?

Mr. ROBBINS. Yes, sir; we certainly claim that it is strictly a private company.

Senator DOLLIVER. It is engaged in hauling merchandise from one part of the country to another.

Mr. ROBBINS. No, sir; we transport nothing.

Senator DOLLIVER. You furnish the vehicles in which it is carried.

Mr. ROBBINS. We rent cars to the railroads.

Senator DOLLIVER. You charge the people for the services you render in the interstate movement of their products.

Mr. ROBBINS. We furnish a local service in the way of refrigeration.

Senator DOLLIVER. You have just stated that you charge people, for your service in the interstate movement of freight from Michigan to Boston, $45 per car.

Mr. ROBBINS. I have tried to cover our position about that in the various statements that have led up to the same thing. But very briefly, again, our position is that, so far as cars are concerned, we simply rent them to the railroads; we transport nothing.

Senator DOLLIVER. Reserving the right to arbitrarily adjust the icing charges and other incidentals?

Mr. ROBBINS. So far as refrigeration is concerned, we claim that that is a local service, not a part of interstate commerce.

Senator DOLLIVER. That is a question for us to consider.

Mr. ROBBINS. Yes, sir; merely incidental to it, the same as a great many other things which I mention.

Senator DOLLIVER. In what respect does the ownership of the Armour Car Lines differ from the ownership of the Armour Packing Company?

Mr. ROBBINS. The Armour Car Lines and Armour & Co. are separate and distinct corporations.

Senator DOLLIVER. But I refer now to the substantial interests; are they practically the same interests?

Mr. ROBBINS. The stockholders in both companies to a large extent are the same.

Senator DOLLIVER. Do the Armour Car Lines, Armour & Co., or persons associated in one or both of these companies, actually own an interest either in the business or stock of a fruit-packing house, for example, in California?

Mr. ROBBINS. No, sir; they do not.

Senator DOLLIVER. Does the car lines company have any interest in the Ruddic-French Company?

Mr. ROBBINS. No, sir.

Senator DOLLIVER. Or the Earle Fruit Company?

Mr. ROBBINS. No, sir.

Senator DOLLIVER. Do any of those who are stockholders of the company have such an interest in those fruit companies in California?

Mr. ROBBINS. No, sir.

Senator DOLLIVER. Or the Armour Packing Company?

Mr. ROBBINS. No, sir.

Senator DOLLIVER. Or persons interested in that?

Mr. ROBBINS. No, sir.

Senator DOLLIVER. Have you read an article in one of the magazines of last month, I think, entitled "The greatest of the trusts?" Have you had your attention called to that article?

Mr. ROBBINS. I think I read it; yes, sir.

Senator DOLLIVER. In which representations were made, rather elaborately, that those interests are practically united, and that in one form or another the same people are interested in the fruit-packing business as are interested in the fruit-carrying business?

Mr. ROBBINS. The Armour interests have been charged at times with owning a pretty large share of that business in California. I think I have explained before the Interstate Commerce Commission, I have explained before the House committee, and I will explain again here now what connection we had at one time with one fruit company in California, if you would like to be enlightened on that subject.

Senator DOLLIVER. I would like to know the truth about it, if we can get at it.

Mr. ROBBINS. In about 1900 we were offered, and saw fit to buy, the cars of a company known as the "Earle Fruit Company." The owner, Mr. Earle, after the trade was well along, finally decided he would not sell the cars without selling the fruit company, and an ice company located at Truckee, Cal. We refused to buy the fruit company at first. Later we found a man who offered to buy the fruit part, we buying the cars and the ice company. When we had that about fixed up, Mr. Earle's company refused to make two different contracts for different portions of the business, and it had been decided that it was necessary for his protection to make one contract for the purchase of all three of the companies. That contract was made in our name. Immediately after, as soon as the contract could be put in form and executed, within a week or so, the fruit company was turned over to the other parties who undertook to purchase it. In the meantime we took no part in the business, had nothing to do with it. That is the shadowy foundation on which all this talk has been built about our owning the fruit companies in California. Technically, we owned it a week; actually, we never had any interest in it.

Senator DOLLIVER. I think that your statement is at least entitled to go with the rest of them. There seems to be a very great misunderstanding in the public mind about this, both in the newspapers and magazines, as well as in the variety of discussion going on.

Mr. ROBBINS. I have made a statement about it two or three times under oath, but they keep talking about it.

Senator DOLLIVER. Mr. Ferguson, when he was before this committee, went so far as to say that this company was practically in the commission business; that knowing of the shipments by reason of the fact that they were compelled to make them through the Armour Car Lines they would flood the market with their own shipments at the same time the ordinary commission merchants' consignments would arrive, thus perpetrating upon the public a very great outrage.

Mr. ROBBINS. I brand that as absolutely false.

Senator DOLLIVER. You are familiar with his testimony in respect to that?

Mr. ROBBINS. Yes, sir.

Senator DOLLIVER. What does your company pay for ice in California?

Mr. ROBBINS. I could not answer that question, except in a general way. We have one ice plant of our own in the mountains, and we buy ice through the valleys. The prices range as high as $8 a ton for ice, but I suppose the price is not the same at any two different points.

Senator DOLLIVER. Who is responsible for the losses and damages that sometimes occur to those fruit shipments under your arrangements with the railroads?

Mr. ROBBINS. If it is owing to lack of cars or faulty cars or failure to properly have the cars reiced, we are responsible.

Senator DOLLIVER. Does your contract with the railroad companies locate that responsibility in any way?

Mr. ROBBINS. It states it as plainly as a lawyer can draw the document.

Senator DOLLIVER. Have you a copy of that contract with the Southern Pacific Railway Company?

Mr. ROBBINS. I think it was printed in a pamphlet I had here yesterday.

Senator DOLLIVER. I should be glad if you would put it in the record as part of your statement.

The agreement referred to is as follows:

Memorandum of agreement entered into this 10th day of October, 1902, between the Southern Pacific Company (Pacific system), a corporation of Kentucky, hereinafter designated as the railway, and Armour Car Lines, a corporation of New Jersey, hereinafter designated as the car line, witnesseth:

Whereas the railway is in need of ventilator-refrigerator cars for transporting shipments of fruits, vegetables, etc., from the Pacific coast to eastern points; and

Whereas the car line has a large number of such ventilator-refrigerator cars suitable for this traffic,

Now, therefore, in consideration of the benefits mutually to accrue, and for the purpose of securing to the public the latest improved and suitable ventilator-refrigerator equipment, it is hereby agreed and understood—

1. CITRUS FRUIT, VEGETABLES, AND DECIDUOUS FRUIT FROM SOUTHERN CALIFORNIA AND SONORA RAILWAY POINTS.

The car line agrees to furnish, as the demands of the business may require, such cars, from time to time, not to exceed five thousand (5,000) ventilator-refrigerators of the latest improved pattern, equal to the best, and not less than eighty (80%) per cent of which cars are to be forty (40) feet long, and the balance not less than thirty-six (36) feet long, suitable for the transportation of citrus fruit, vegetables (including cantaloupes, but not including potatoes and onions), and deciduous fresh fruit originating in southern California at points south of Mojave and Elwood, and points on the Sonora Railway, destined to points east of and including El Paso, Deming, Ogden, and Portland.

2. DECIDUOUS FRUIT, CITRUS FRUIT, APPLES, VEGETABLES, AND SALMON FROM NORTHERN CALIFORNIA.

The car line agrees to furnish all the cars necessary for shipments of deciduous fresh fruit, citrus fruit, apples, vegetables (not including potatoes and onions), and fresh or pickled salmon originating at points in California north of Mojave and Elwood, destined to points east of and including El Paso, Deming, Ogden, and Portland, said cars to be ventilator-refrigerator cars of the latest improved pattern, equal to the best, not less than eighty (80%) per cent of which to be forty (40) feet in length, and the balance not less than thirty-six (36) feet long, suitable for the transportation of the above described commodities.

3. The use of said cars to be open on equal terms to all shippers who make requisition upon the railway for cars necessary from time to time, the distribution of said cars to be performed by the railway, who shall have the option of determining at what junction said railway will deliver the loaded cars to connecting line, and over what road or roads the cars shall move to destination. With respect to the distribution of cars for loading, there shall be such cooperation between the railway and the car line as shall promote mutual economies without impairing the efficiency of the service rendered the public, to the end that the railway shall not have to render unnecessary service or the car line furnish unnecessary equipment.

4. Said cars to be equipped with automatic air brakes and Master Car Builders' couplers, and to be in these and all other respects suitable for safe transportation over all the standard-gauge lines of the railway.

5. Car line agrees to provide ice when necessary for refrigeration of contents of said cars at point of shipment and in transit to destination, and agrees to be responsible to shippers or consignees for proper and adequate refrigeration, and to hold the railway harmless from loss and damage to contents of cars arising from improper or inadequate refrigeration, the car line to charge shippers or consignees reasonable compensation for the refrigerating service either by having such charges billed as advance charges by the railway for car line's account, or by making drafts on shippers or consignees therefor.

Car line to provide natural ice at all points north of and including Bakersfield, with the understanding that if there are interior shipping stations at which car line deems it unwise to establish icing station, it is agreed, in order that use of natural ice will not be burdensome upon car line, that on such cars as it is necessary in regular course of business contemplated herein, to ice at nearest regular icing station of car line, said ice in tanks of cars iced at such icing station will be hauled by railway to fruit-loading point at the difference between the freight rate on ice from mountains to such icing station and freight rate from mountains to fruit-loading point, charge in no case to be less than two dollars and fifty cents ($2.50) per car.

6. Car line agrees to keep the interior of cars and all parts pertaining to refrigeration in proper condition without cost to the railway, the railway supplying, free of charge, suitable track room where necessary cleaning and repairing of cars can be done.

7. Labor and expense incident to refrigeration of said cars, aside from train and ordinary switching service, waybilling, and collection of charges, to be done at the expense of the car line.

8. The car line agrees to protect the railway from any loss or damage caused from defects or improper refrigerating portions of car, and also to hold the railway harmless from damages or expenses of litigation by reason of use in said cars of any combination or device which may be claimed to be an infringement of any patented device owned by any other person or corporation.

9. If, because of some unforeseen emergency resulting in car shortage, it becomes necessary at any time for the railway to furnish cars which are by it obtainable from other sources to meet the emergency, then the car line agrees to refrigerate such cars without prejudice same as it does its own at same charge per car which it makes in the case of its own cars. Car line agrees to pay the railway whatever amount said cars obtained to meet such emergency may cost the railway in excess of what would have been the cost to the railway if car line had furnished the necessary cars.

10. It is understood firm names, trade-marks, and the like shall not be placed on cars; this not to be construed as forbidding posters of shipper or consignee which can be readily removed.

11. The railway agrees to pay the car line and the car line agrees to accept for the use of said cars mileage as follows:

ON CITRUS FRUIT, VEGETABLES, AND DECIDUOUS FRUIT FROM SOUTHERN CALIFORNIA AND SONORA RAILWAY POINTS.

Eastbound.—On cars loaded with citrus fruit, vegetables, and deciduous fruit from points in California south of Mojave and Elwood, or from points on Sonora Railway, six-tenths (6/10) of one cent per car per mile for movement over the railroads of the Southern Pacific Company (Pacific system).

Westbound.—Six-tenths (6/10) of one cent per car per mile when cars are delivered with loads to the Southern Pacific Company at Ogden, El Paso, Deming, or Portland. No mileage to be paid on empty cars; the Southern Pacific Company to have the privilege of loading cars at or west of its eastern junctions, if it desires to do so.

ON ORANGES, APPLES, VEGETABLES, AND SALMON FROM NORTHERN CALIFORNIA.

Eastbound.—On cars loaded with oranges, apples, vegetables, and salmon from points in California north of Mojave and Elwood, six-tenths (6/10) of one cent per car per mile for movement over its rails.

Westbound.—Six-tenths (6/10) of one cent per car per mile when cars are delivered with loads to the Southern Pacific Company at Ogden, El Paso, Deming, or Portland. No mileage to be paid on empty cars; the Southern Pacific Company to have the privilege of loading cars at or west of its eastern junctions, if it desires to do so.

ON DECIDUOUS FRUIT FROM NORTHERN CALIFORNIA.

Eastbound.—No mileage to be paid loaded or empty.

Westbound.—Six-tenths (6/10) of one cent per car per mile when cars are delivered with loads to the Southern Pacific Company at Ogden, El Paso, Deming, or Portland. No mileage to be paid on empty cars; the Southern Pacific Company to have the privilege of loading cars at or west of its eastern junctions, if it desires to do so.

The railway shall not load any such cars with ice or other bulk commodities likely to injure such cars or impair their usefulness for the special purpose for which they are intended, as aforesaid.

12. The railway agrees and obligates itself, during the term of this contract, to use the car line's equipment exclusively in the movement of fruits, vegetables, apples, and salmon, as hereinbefore described, from points on the railway's lines in California and Sonora to points east of or via El Paso, Deming, Ogden, and Portland, provided the car line supplies sufficient equipment to properly care for the business.

13. The railway agrees to furnish free transportation for six representatives of the car line regularly and exclusively engaged in supervising the business herein described.

14. In event of general labor troubles which make it impossible to obtain movement of cars in sufficient number or with sufficient despatch to furnish at junction points cars necessary to protect the traffic hereinbefore described, then and in that case the railway will take cognizance of such disability of the car line in construing the terms of this agreement.

15. Should competition or other causes result in the demoralization of refrigerator rates on shipments hereinbefore described, the parties hereto agree jointly to provide ways and means for meeting such competition in so far as may be necessary to protect their mutual interests.

16. It is mutually agreed that in case of wilfull or continued default by either party to observe the obligations of this agreement, such default of one party resulting in loss to the other, the party so in default shall fully indemnify the aggrieved party, or in event of failure so to do said aggrieved party shall have the option of terminating this agreement on thirty (30) days' notice.

CARS FOR SOUTHERN PACIFIC COMPANY'S LOCAL SERVICE.

17. The car line agrees to lease to the railway (railway's option, to be declared within six (6) months from date of this agreement), on fifteen (15) days' notice from the railway, one hundred (100) thirty-six (36) foot ventilator refrigerator cars for use in the local service of the railway, at a rental of ten ($10) dollars per car per month, for the balance of the term of this agreement, said rental to apply from date on which cars are delivered at the points hereinafter designated until they are returned to the car line at points so designated, payable at the office of the car line in Chicago on the first of each month for the month second preceding, or fraction thereof, during which said cars may be in the railway's service. The car line agrees to deliver said cars in good condition at Chicago, Kansas City, Omaha, Los Angeles, or Sacramento, at its option, within thirty (30) days after the expiration of said fifteen (15) days' notice.

18. Car line further agrees to lease to the railway (at the railway's option, to be declared within one year from date of this agreement), on fifteen (15) days' notice from the railway, two hundred (200) additional thirty-six (36) foot ventilator-refrigerator cars, or any part thereof, at the rate of not less than one hundred (100) cars monthly, beginning at expiration of said fifteen days' notice, for use in the local service of the railway, for the balance of the term of this agree-

ment, at the same rental and terms of payment as hereinbefore provided.

19. Said leased cars to be painted and lettered in the name of the railway, as directed by its officers, at the car line's expense.

20. The railway has the right to use said leased cars in its local service on all classes of suitable freight, either with or without ice, and to handle and to have control over them in all respects as it does its own equipment, save and excepting that said cars are not to be used in the fruit and vegetable business, as hereinbefore described, destined to points east of El Paso, Deming, Ogden, or Portland, for which cars are provided in the first part of this agreement. Said cars may be used for bananas, potatoes, and onions, whether through or local.

21. The railway agrees to return said leased cars on the expiration of this lease to the car line at its shops at Chicago, Kansas City, or Omaha, at the railway's option, same to be repainted at the expiration of the lease by the car line at car line's expense.

22. Mileage or per diem from foreign lines for said leased cars to be reported to and retained by the railway.

23. The railway agrees to maintain said leased cars as to repairs, keep them in good order in all respects, and return them to the car line at the expiration of lease in good order, less ordinary wear and tear.

24. The railway agrees that the lessor is the owner of said leased cars, and further agrees that whenever, in the judgment of the car line, it may be necessary for the protection of its property and ownership in said cars to indicate such ownership by attaching a plate to said cars, or otherwise compatible with the intent and meaning of this contract, the said lessor to have the right to do so.

25. In the event that any of said leased cars are destroyed by the railway, or otherwise, the railway agrees to notify the car line, who is to bill therefor and receive settlement from the railway destroying, under Master Car Builders' rules; rental of cars so destroyed to cease from date of such destruction.

26. In the event of shortage of cars to be furnished by the car line, covered by the first part of this agreement, for shipments of fruits and vegetables for points east of the gateways, the railway shall temporarily transfer these leased cars to the car line for such period as may be necessary, provided same can be spared for such period by the railway from its local service. Railway to be released from its obligations as lessee during such period.

27. This agreement shall be binding on the successors or assigns of either the railway or the car line.

28. This agreement to be in effect from and after November 1st, 1902, for three (3) years from that date, and thereafter until cancelled by either party on and after having given six (6) months written notice of an election to cancel same.

SOUTHERN PACIFIC COMPANY (PACIFIC SYSTEM),
Per J. C. STUBBS, *Third Vice-President.*
ARMOUR CAR LINES,
Per J. OGDEN ARMOUR, *President.*

O. K.
WM. SPROULE.
O. K.
G. B. ROBBINS.

Mr. ROBBINS. I am perfectly willing to file it.

Senator DOLLIVER. I want to get at this question: Whether the railroads in California, under your arrangement with them, take a bond and release from shippers by virtue of which the carrier is released from responsibility to the shippers on account of losses or delays in the transportation of the merchandise?

Mr. ROBBINS. I could not answer that; that would be a matter between the shippers and the railroads.

Senator DOLLIVER. But you have some familiarity with it?

Mr. ROBBINS. Not any more familiarity with that condition in California than anyone else; I know it is the practice for the railroads anywhere to take a general release from shippers in connection with perishable products, releasing them from certain things, and containing an obligation on the part of the shippers to pay charges if for any reason they are not paid at destination.

Senator DOLLIVER. How long has it been since the custom of exacting a rental from the railways for these cars grew up?

Mr. ROBBINS. You refer to the rental as mileage?

Senator DOLLIVER. The mileage allowance; yes.

Mr. ROBBINS. That has been the practice as long as I can remember; over twenty years, anyway.

Senator DOLLIVER. It was not the original practice of your company, was it?

Mr. ROBBINS. I think it was—ever since we have had cars.

Senator CLAPP. When does this change in the rates on Michigan fruit products go into effect, or, if already in effect, when did it go into effect?

Mr. ROBBINS. It will go into effect beginning with the shipments of the present season, which begin in August.

Senator CLAPP. As between this year's shipments and the shipments of last year, has there been any material decrease in the cost of the icing service? If so, in what respect?

Mr. ROBBINS. I think that we get a little cheaper ice at some places in Michigan, but more particularly because of other economies in the service and our having a larger and broader business elsewhere.

Senator CLAPP. Is your business elsewhere affecting the cost of ice in Michigan and en route to Boston?

Mr. ROBBINS. I want to bring out this point, Senator Clapp: That the measure of a fair rate can not be taken just at the harvest time and predicated exactly on the cost of the ice and the incidentals that go into the service itself. But we have a delay; in ordinary seasons those cars are kept parked in Michigan and remain idle for two to four weeks sometimes, before they are brought into service. If, by our thrift and agreements elsewhere, we can eliminate some of that delay and make it a better business as a monthly and yearly business, we take that fully into consideration in making our Michigan rates and rates everywhere else.

Senator CLAPP. Referring now to the Michigan traffic, what has been approximately the percentage of reduction in the actual cost of the icing service as between this year's crop and last year's crop?

Mr. ROBBINS. I have nothing upon which to base an exact answer to that question, but if you wish me to guess at it, I would say that possibly a dollar or two per car in the cost of the ice; but this year

the Michigan business promises to be very much larger than that of last year, which will enable us to do the business more cheaply; the same men and the same organization will take care of double the business that they took care of last year.

Senator CLAPP. And yet the railroad company bears half of this reduction, if I understood you correctly?

Mr. ROBBINS. Yes, sir; and they are governed somewhat by the fact that they previously stood all that burden—that is, they at one time furnished ice free, or paid for the ice. They discontinued that practice entirely. Now they have come back to it again partially. Of course, that is a matter with which we have nothing to do, although we are blamed, as a rule, for that charge, with which we had no connection whatever.

Senator CLAPP. Have you read the testimony of Mr. Lincoln, taken in this hearing?

Mr. ROBBINS. I think I did see that part of it that refers to private cars.

Senator CLAPP. Under your exclusive contract with the Michigan road, while they made no distinctive charge for icing they supposed that they were making a sufficient charge for transportation to cover the expense of transportation and leave a profit to the railroad company, did they not?

Mr. ROBBINS. You are questioning me now on the railroad part of the business. I would rather not answer for them on that. At one time we got free icing and at another time we did not.

Senator CLAPP. I ask you for your general opinion, based on your experience, whether you do not think that at the time they were getting what you call free ice they were charging for freight an amount which they believed would cover the cost of transportation and a profit.

Mr. ROBBINS. I think the railroad people themselves explained that.

Senator CLAPP. How did they explain it? I have not seen it.

Mr. ROBBINS. In the interstate-commerce case at Chicago; I remember it about this way: That under that rule they handled about two-thirds of the peaches under ventilation without ice and about one-third under refrigeration, for which they furnished the ice. They analyzed the business and found that their outlay for ice was so great that they were not only not making money, but actually losing money on the refrigerator part of the business. Therefore they changed their rule. I think that appears in Mr. Patriarch's testimony.

Senator CLAPP. Do you understand that when they changed the rule they changed it with a view simply of covering the cost of icing or of making the icing business a distinctively profitable business by itself?

Mr. ROBBINS. There would be no profit in it for them.

Senator CLAPP. Even though they charged what it cost them?

Mr. ROBBINS. No, sir.

Senator CLAPP. Is it not a fact that outside of the icing charges made by the private car lines the icing charges made by the railroad companies where they either use their own cars or indiscriminately use refrigerator cars coming from other lines are made as a separate

item, or is it included in the general cost of transportation? It is not treated by them as a distinctively business proposition conducted for profit by itself, is it?

Mr. ROBBINS. Well, I can hardly agree to your view of it. That is a railroad question again.

Senator CLAPP. What do you think of Mr. Lincoln's testimony on that question?

Mr. ROBBINS. I do not think I remember just what he said on that particular point.

Senator CLAPP. Broadly but fairly stated, I think it was that, although they expected to get out of icing what was a fair and complete return of the cost of it, yet it was not conducted by the railroad company with a distinctive idea of making that a profitable investment of itself.

Mr. ROBBINS. I can not deny Mr. Lincoln's view in regard to that, but the fact is that the cars used by Mr. Lincoln's company belonged in the main to the company. At various points in Arkansas, Texas, and other sections our roads are the same as theirs. I say freely we do not do icing business at the cost of the ice when we are able to get ice cheaper than they are. That may explain the difference.

Senator CLAPP. He testified that right on his line of road where the fruit was shipped in cars of the private car line company—to use that term as we now understand it generally—the icing charge was higher than where the fruit was shipped either in their own cars or in the refrigerator cars that came from other lines indiscriminately as the cars are mingled throughout the country.

Mr. ROBBINS. I will explain, in that connection, that there are different rules that govern with respect to different kinds of fruit under refrigeration; that that might be true as to some kinds of fruit handled by this company under refrigeration; but that would not be a parallel case to the kind of business we do under refrigeration in the same territory. We only take out certain highly perishable fruits and vegetables that can be handled by arrangements to meet conditions on long lines of through railway, under refrigeration, that an entirely different rule would cover.

Senator CLAPP. Now, when you were giving your answers to Senator Foraker in regard to the value of the ice used in that particular illustration were you giving the cost of the ice to your company?

Mr. ROBBINS. It was my rough estimate of it; yes, sir. At some of those stations we might furnish ice from our own stations, and in that event I suppose we could fairly consider that it should be charged at market value.

Senator CLAPP. What will be the charge on the Michigan Central to Boston this year, if you know?

Mr. ROBBINS. No, sir; I do not know.

Senator CLAPP. Do you know whether or not in this connection, with the reduced cost of icing, half of which is borne by the railroad company, they also decrease the cost of transportation—the charge which they make?

Mr. ROBBINS. For freight?

Senator CLAPP. Yes; on these same goods.

Mr. ROBBINS. I understand not. I had not heard of their doing so.

Senator CLAPP. Now, coming back, you stated, as I recall it, yester-

day, referring to the laws now in existence, that you thought we had all the law that was necessary.

Mr. ROBBINS. Yes, sir.

Senator CLAPP. And that between the interstate-commerce law and the Elkins law there was a complete remedy for all discriminations. Did I understand that?

Mr. ROBBINS. Yes.

Senator CLAPP. And that that suggestion also went to the matter of affording a remedy for unreasonable rates. Did I so understand you?

Mr. ROBBINS. Yes; as far as interstate commerce is affected.

Senator CLAPP. Certainly, as far as interstate commerce is affected. Now, on the Michigan Central Railroad—I think that is the road you have the contract with, or is it the Pere Marquette?

Mr. ROBBINS. The Pere Marquette.

Senator CLAPP. Well, take the Pere Marquette for an illustration.

Senator FORAKER. In that connection, Senator Clapp, where it is said that we have enough legislation already, I think ought to be repeated his other statement that neither one of these laws, in his opinion, applies to them.

Senator CLAPP. I will get to that in a moment. On the Pere Marquette line in Michigan a man who buys a carload of fruit there is absolutely obliged to deal with your company, is he not?

Mr. ROBBINS. Yes, sir.

Senator CLAPP. In other words, not using the word offensively at all, because it has a significance outside of any offensive significance, as to that free territory you have to-day an absolute monopoly so far as the icing and refrigeration necessary to get that fruit to market is concerned?

Mr. ROBBINS. Under certain limitations; yes, sir.

Senator CLAPP. What are the limitations?

Mr. ROBBINS. That the rate shall not exceed certain figures, that we shall furnish all the cars required, and suitable cars, and ice them.

Senator CLAPP. Those are the conditions under which you enjoy the monopoly, are they not?

Mr. ROBBINS. Well, if you look at it in that way, the monopoly, as you call it, is limited as to rates we can make, which I understand to be the meat of the question involved.

Senator CLAPP. Well, but the first and primary inquiry that I am making is, is it not a fact that you have this monopoly? No one else can use a car there, can they?

Mr. ROBBINS. No, sir.

Senator CLAPP. No one else can furnish a pound of ice to that man who buys that carload of fruit.

Mr. ROBBINS. It is a monopoly subject to the conditions, if you have a mind to call them such.

Senator CLAPP. Now, we will come to the conditions. You have a similar contract with about twenty other railroads in this country, I understand.

Mr. ROBBINS. I think at least that.

Senator CLAPP. Yes, approximately; and those roads of course serve the fruit-producing districts, do they not?

Mr. ROBBINS. Yes, sir.

Senator CLAPP. Can you tell us offhand what roads these contracts are with?

Mr. ROBBINS. They are with the Atlantic Coast Line, the Seaboard Air Line, the Central Georgia Railway, and I think all the Georgia and Florida lines, and the Southern Pacific.

Senator CLAPP. Hold on a moment. What roads, then, reaching the South Atlantic States, the fruit regions, are exempt from the exclusive contracts with your company?

Mr. ROBBINS. Well, they are all exempt on business except one or two varieties, and we have exclusive contracts with most of the southern lines for their berry and fruit business.

Senator CLAPP. It is the berry and fruit business that we are talking about.

Mr. ROBBINS. Yes.

Senator CLAPP. Well, now, in the so-called South Atlantic States—take Georgia, for instance, and Florida—what roads, if any, gathering the crops of those States are to-day at liberty to use any refrigerator cars they see fit?

Mr. ROBBINS. Broadly speaking, none of them. There may be some rare exceptions to that.

Senator CLAPP. Very slight.

Mr. ROBBINS. Yes; but, generally speaking, we handle all that business.

Senator CLAPP. So that the condition which you have admitted as to the territory subject to the Pere Marquette practically applies to the States of Georgia and Florida?

Mr. ROBBINS. Yes.

Senator CLAPP. On fruits?

Mr. ROBBINS. Yes; and berries.

Senator CLAPP. Now, going westward, where do you strike the next great center of the fruit and berry business?

Mr. ROBBINS. Well, in Tennessee.

Senator CLAPP. Well, you may state how far this condition of exclusive contract of your company prevails in the berry and fruit district of Tennessee.

Mr. ROBBINS. We handle, I think, all the business in East Tennessee, what we know as the Chattanooga district, and part of it in west Tennessee.

Senator CLAPP. Then we go westward, and where is the next largest fruit center?

Mr. ROBBINS. We have contracts in Missouri and Arkansas for both berries and peaches.

Senator CLAPP. I do not understand that you have practically the control in Missouri and Arkansas.

Mr. ROBBINS. No; except on certain lines of railroad.

Senator CLAPP. Yes; on certain lines.

Mr. ROBBINS. Yes; except on certain lines.

Senator CLAPP. But not so generally on the entire situation as you have in the South Atlantic States. Now, what competition is there with you or open to the purchaser of these goods in the California fruit-raising districts?

Mr. ROBBINS. The Santa Fe operates practically in all the districts in California.

Senator CLAPP. And you have the Southern Pacific?

Mr. ROBBINS. Yes.

Senator CLAPP. Now, in respect to your contract with the Pere Marquette, when I asked you if this was not a monopoly you sought to qualify it somewhat by saying there were limitations as to the prices you could charge.

Mr. ROBBINS. Yes.

Senator CLAPP. Just what limitations can the man who buys a carload of peaches in Michigan on the line of the Pere Marquette Railroad exercise on your right to fix icing charges on that carload of fruit?

Mr. ROBBINS. He has no right to fix it.

Senator CLAPP. Then the man who pays the freight does not participate in this limitation on your monopoly?

Mr. ROBBINS. Well, I think, generally speaking, the grower and shipper pay the freight, as a rule, finally.

Senator CLAPP. Well, if you want to load it onto the grower, just tell me how much authority the grower of this carload of fruit in Michigan can exercise in this limitation that you have spoken of as to rates, the charge for icing.

Mr. ROBBINS. He has, of course, to accept our rates.

Senator CLAPP. Then he does not participate in this limitation.

Mr. ROBBINS. No, sir.

Senator CLAPP. Well, about what value is that limitation to the man who pays the freight? You can put it on the shipper or the man who buys, I do not care which, particularly, for this purpose.

Mr. ROBBINS. That limitation is a charge which the railroad and ourselves work out, and in which some of the shippers most interested are consulted as a rule, and which they are generally willing to pay, considering the grade of service furnished by us.

Senator CLAPP. Well, what has the shipper to say about it? That is what I am getting at.

Mr. ROBBINS. Well, he is willing to pay it; considers it a fair rate for the service rendered.

Senator CLAPP. He comes pretty near taking the rate you fix, does he not?

Mr. ROBBINS. Well, we fix it; yes, sir. He has no absolute recourse, but, as stated, we claim to satisfy about 80 or 90 per cent of those actual growers and shippers.

Senator CLAPP. What would be the fate of a man—assuming, now, you are beyond the reach of anything except the mild influences of the Gospel on the Mount—what would be the effect on the shipper who was conscientiously fighting you on this question of these icing charges?

Mr. ROBBINS. He would simply pay the same rate as anybody else.

Senator CLAPP. He would pay the rate you fix, would he not?

Mr. ROBBINS. Yes, and the effect further——

Senator CLAPP. And in the course of that kind of a controversy with you, if it were kept up very long, he would finally come to the conclusion that heaven certainly was not on earth, would he not?

Mr. ROBBINS. I could not say as to that.

Senator CLAPP. In other words, he is entirely at your mercy, is he not?

Mr. ROBBINS. No; I do not think so.

Senator CLAPP. You do not?

Mr. ROBBINS. He is left in a position to do business on the same basis as everybody else, with a limitation as to what our rate shall be.

Senator CLAPP. Then we will just enlarge the inquiry. We will take all the shippers that are forced practically by location to come to the Pere Marquette Railroad. Now, we will take them as a body. They have got to accept your rates, have they not?

Mr. ROBBINS. Yes.

Senator CLAPP. And assuming that you are beyond the reach of existing laws, they have no voice in fixing that rate.

Mr. ROBBINS. Except the same appeal that any man has against another who is in a private business.

Senator CLAPP. Well, that is a very practical remedy to that man, I assume. To whom would he make his appeal, when he got down to his appeal?

Mr. ROBBINS. Appeals have frequently been made to us, and we make frequent reductions in our rates. We have made several voluntary reductions in our rates this year where we could afford to do so.

Senator CLAPP. Oh, yes; where you could afford, in your judgment; but in determining the question of whether you could afford or not that man practically has no voice whatever when you reduce that thing to its last analysis, has he?

Mr. ROBBINS. Technically, I think that is right.

Senator CLAPP. You may answer this question if you see fit. Your books would show, would they not, the average per diem service of your cars during the year? I am speaking now of those cars that are used for business other than the Armour business. You certainly keep records that would show that fact.

Mr. ROBBINS. It could be worked out from our records.

Senator CLAPP. And your books would also show the mileage on last year, we will say, by the cars of the Armour Car Lines, exclusive of those cars that are used by Armour & Co., would they not?

Mr. ROBBINS. It could be separated.

Senator CLAPP. Now, I understand you to claim that your business is a private business and that you do not feel under any obligation to disclose to this committee the earnings of those cars during that time.

Mr. ROBBINS. We do not think we ought to be asked to do so.

Senator CLAPP. Then, with a self-confessed monopoly—and again I say I do not use that word offensively, for I am speaking of a condition—upon the fruit industry of Michigan, practically upon the fruit industry of Florida and Georgia and the South Atlantic States, you claim that there ought to be no law that would place you in the same relation to the shipper, practically, that the carrier is placed in?

Mr. ROBBINS. I explain this again that I tried to put in writing this morning as plainly as I could, that if refrigeration is a part of transportation, of carriage, that the law already covers it.

Senator CLAPP. Well, is it a part?

Mr. ROBBINS. I think it is not.

Senator CLAPP. And upon that ground you decline to state the mileage and the earnings of your cars for the year 1904, do you not?

Mr. ROBBINS. Well, because we are a private company.

Senator CLAPP. And because you are not under the interstate-commerce act. That is the reason, is it not?

Mr. ROBBINS. Yes.

Senator CLAPP. And yet, exercising this absolute control and standing here and refusing to disclose the evidence necessary to an investigation of this kind, you still insist that you are not under the interstate-commerce law, and, if you are, you ought not to be?

Mr. ROBBINS. I think my position is sound in objecting to furnishing the records and the books to the public until it is shown that we are subject to the interstate-commerce law.

Senator CLAPP. That is all.

Senator KEAN. Did you ever read section 6 of the interstate-commerce law?

Mr. ROBBINS. I have read it, but I do not remember the law by sections.

Senator CULLOM. I just want to ask what became of the investigation that I understand is being made by the Interstate Commerce Commission at Chicago? Has that concluded, or what has become of it?

Mr. ROBBINS. I hardly know. The conditions were these: There were two cases in Chicago, in both of which we were interested. One was known as the "Michigan Case." It was heard for two days, I think, and concluded, and was called a general case in this investigation of private car lines. The Commission called this man Strikemans only as concerning our business. That is the man who stole the records from our office, and when they got through with him they told me that was the only witness at present for us and for me to come back in the afternoon. When I got back in the afternoon I found that they had adjourned, and why or until when I do not know. We, as usual, had no opportunity to present any witnesses for our side.

Senator CULLOM. This is the Interstate Commerce Commission?

Mr. ROBBINS. Yes.

Senator KEAN. What did you say about stealing the records?

Mr. ROBBINS. The only witness that was present against us in a general way was a man named Strikemans, who was a stenographer.

Senator CULLOM. The man who had a cipher book, or something of that sort?

Mr. ROBBINS. Yes. It is all explained in the record.

The CHAIRMAN. I think that is all.

STATEMENT OF MR. C. W. ROBINSON.

The CHAIRMAN. State your name, place of residence, and occupation.

Mr. ROBINSON. My name is C. W. Robinson; I reside in New Orleans, La.; I am a manufacturer of long-leaf yellow-pine lumber. I appear before this committee on behalf of the Board of Trade of New Orleans and on behalf of the C. W. Robinson Lumber Company and on behalf also of the Central Yellow Pine Association, in which association I am a director.

The CHAIRMAN. Have you any records of the chamber of commerce that you desire to present?

Mr. ROBINSON. No. Mr. Chairman and gentlemen of the committee, New Orleans asks only that nothing be done to abridge or lessen in any degree her natural advantages as a great port; that nothing will be done that will permit in any manner traffic that should and will naturally flow down the great valley of the Mississippi and across the prairies of Illinois to be artificially diverted to another port. She feels that climatic conditions are in a way against her, but that other and greater advantages more than overcome the handicap of climate. She has a river frontage of some 30 miles, with a depth of water ranging from 30 to 50 feet. Her harbor is landlocked, and ice blockades are unknown. At the port of New Orleans there are no lighterage charges, no arbitrary charge on grain of 3 cents per hundred pounds, as was disclosed by Mr. Hill in his testimony before you a few days since, but cars are placed along the side of the vessels and some kinds of traffic are actually loaded directly from the cars to the vessels. Our railroads from the North and West have no mountain chains to cross, and may therefore be operated at a low cost. That freight rates can possibly in justice ever be adjusted on a mileage basis he does not believe. She is distant from Chicago about the same mileage as New York is distant. She is nearer to St. Louis, Omaha, and Kansas City than are the eastern ports.

Then why should not the produce of the country west and southwest of these cities move to the port of New Orleans? She feels that the eastern trunk lines have moved traffic to eastern ports that properly belongs to her. She feels that even now they are moving grain at or below cost to them of transportation in an attempt to make water flow uphill—in an attempt to overcome by artificial means her natural advantages. She asks that they be restrained from this attempt. She feels that there is enough business for all and that each should have what naturally belongs to the port easiest and cheapest to reach. By the effort to rob New Orleans of her natural advantages great and costly blockades of freight have occurred at the eastern ports—"a waste of transportation," as Professor Ripley said on yesterday. I agree, in the main, with what Professor Ripley said. The body of the transportation question is sound and healthy, but it has cinders in its eyes. Did you ever have a cinder in your eye? Do you remember how very painful it was, and do you recall that you made every effort in your power to have it removed, and quickly? Have you reflected that the eye is very close to the brain, and that if the cinder be allowed to remain in the eye for a great length of time there is as much danger to the patient as there is from what may seem a more serious matter? First, the sight of the eye would be lost. Possibly the other eye would establish a sympathetic connection with the injured eye, and the sight of both eyes be lost. The inflammation might continue in these delicate membranes until the brain was reached and the patient relieved only by death.

The Interstate Commerce Commission needs, and should have, enlarged powers to enable it to remove the cinders, which in many cases through the entire country have become almost intolerable. Mr. Hill, in my judgment, uttered a great truth when he said to you that the correct basis for fixing rates was to so adjust them as to

yield a fair return on the value of the road and its equipment; and I am fully convinced that such a process of rate making would be satisfactory to the entire country.

The careful observer of public sentiment, the man who is brought in close contact with the shippers of the country, knows that long before President Roosevelt sent to Congress his message, urging the enactment of a law enlarging the powers of the Interstate Commerce Commission, there was a widespread and general demand by the people of our country for the enlargement of the powers of this Commission, and our President only recognized this demand and officially called the attention of Congress to same in his message. This demand on the part of the people was manifest as early as 1898, and in that year Congress took note of this demand and appointed the Industrial Commission, composed of four members of the Senate, four members of the House of Representatives, and ten prominent citizens. I respectfully ask that the report of this commission be considered by this committee.

Since the very full and complete hearings of the Industrial Commission were completed and its report submitted to Congress there has been almost a constant series of hearings by committees of both Houses of Congress, until it would seem that all the information possible to throw any light on the question is before Congress and before the country.

All sides of the question have had their day in court, and it is hardly possible that any more light can be thrown on the subject by continued hearings and investigations by committees or commissions.

AID TO BUILDING RAILWAYS EXTENDED BY THE UNITED STATES, VARIOUS STATES, COUNTIES, AND TOWNS.

No industry, no class of property owners, no enterprise, no public utility, has ever met with so warm a welcome as that extended to the railway companies by the people of the United States. Congress has voted millions of acres of land to aid in their construction, State legislatures have made munificent donations, counties, cities, and towns have assumed burdens of bonded indebtedness, and public-spirited citizens have contributed liberally in aid of their construction.

By legislative enactment they have been given powers and privileges not accorded to any other class of corporations or to private citizens.

They have become "the king's highways of commerce"—the servants of the people who created them and contributed largely to their building. Fortunately the people have never relinquished their right to supervise their servants. They have never relinquished their right to say to the servant, "You must provide and use modern appliances of safety air brakes, safety coupling devices, etc.," nor have the people relinquished their right to determine what is a reasonable compensation for the services of their servants.

The decisions of all courts, both of the various States and of the United States, have been to the effect that State legislatures and Congress may authorize commissions to regulate rates, etc.

In the hearings before this committee the gentlemen who have so ably and at such length presented the case for the transportation companies have uniformly claimed that freight rates have constantly declined, and they have asserted that the average rate per ton per mile is now lower than ever before in the history of railroad operation.

It may be of interest in this connection to read from the report of the Industrial Commission on this question. The Commission says:

"The long-continued and steady decline of freight rates since the civil war has now given way to a marked advance in the published rates. No similar attempt, with the exception, perhaps, of the year 1894, has been made to arrest, by concerted action of roads of all the country, this progressive decline, due to a considerable degree, as it has appeared, to competition between the railroads themselves. The peculiarity of these advances of 1900 is that they have been made, not by direct changes of tariffs, but by modification of the freight classifications. Merchandise, as is well known, is thrown into various classes according to its value, bulk, risk, etc., and the charges are graded accordingly. Consequently the transfer of a particular commodity from one class to another may operate materially to increase the rate of freight charge. Thus, for instance, the freight rate from New York to Atlanta by any all-rail line is fixed by common agreement at $1.14 per 100 pounds. The rate on second class is 98 cents, on third class 86 cents, on fourth class 73 cents, etc. It is apparent that if goods—axes, for example—which were formerly fourth class are, by a change in classification, made third class, this operates to increase the rates between these points specified from 73 to 86 cents. Moreover, since these classifications, as will be shown later in this report, are agreed upon by all railroads operating within each specified territory, a change of classification operates simultaneously to increase rates throughout the entire section. The same result may be attained also by changing classification according as the goods are shipped in carloads or less than carload lots. Thus, if a commodity was formerly classified as fourth class when shipped in carloads, and as third when in less than carload lots, if the distinction between these two classes of shipment be removed and all are classified as third, whether in large or small quantity, this likewise results in an increase of the freight rate to the large shipper by the difference in the rate between third and fourth class. Or, again, as will be shown, certain commodities are sometimes exempted from classification by a special or 'commodity' rate, as it is called. This commodity rate is usually very much below the rate for classified merchandise. Thus corn by the Official Classification is sixth class, and the rate from Chicago to New York for that class is 25 cents. If, however, corn actually moves under a commodity rate of 17½ cents per 100 pounds, the cancellation of the commodity rate immediately operates to put corn in class six, thereby raising the rate to 25 cents.

"SUMMARY OF CHANGES.

"The general advance of 1900 was inaugurated by the trunk lines operating north of the Ohio River. On January 1, 1900, notice was

given that a new classification, known as 'Official Classification No. 20,' was to supersede No. 19. An investigation made by the Interstate Commerce Commission showed that 824 changes were made by this action, of which 818 produced an advance and 6 a reduction in the rate. The following table shows the distribution of these advances:

ADVANCES.

	Per cent.
434 ratings advanced	42.8
214 ratings advanced	30
100 ratings advanced	20
32 ratings advanced	15.3
17 ratings advanced	16.6
10 ratings advanced	50
6 ratings advanced	100
2 ratings advanced	25
2 ratings advanced	33.3
1 rating advanced	85.7
818	

REDUCTIONS.

3 ratings reduced	30
3 ratings reduced	14.3

"A substantial advance has been made in southern territory, effective on the 1st of July, 1901, in the rates upon cotton fabrics. This immediately affects one of the leading manufactures of the South By this action cotton goods are transferred from fifth to fourth class. Figuring on the basis of New York-Atlanta rates, this means an increase per 100 pounds from 60 to 73 cents. On the other hand, the movement of so-called 'company freight' has been unusually heavy during the period of abnormal expenditure for betterments. This freight moving free adds, of course, to the number of ton-miles moved without addition to the revenue, and proportionately reduces the ton-mileage charge reported below that which actually prevails on service to shippers."

Local as compared with through and domestic as compared with export rates have unquestionably been increased; through and export rates possibly lowered. In short, the basic principle of rate making has been to charge on local freights all the traffic will bear, and on through and export business to charge what the conditions of competition and market prices will leave the transportation companies. In view of these facts, what particular benefit has accrued to the producer or to the domestic shipper by the alleged lowering of the rate per ton per mile?

In 1898 and 1899 the rate on yellow-pine lumber, in carload lots, was raised from all parts of the yellow-pine belt to points on and beyond the Ohio and Mississippi rivers 2 cents per 100 pounds. Again, in 1903 an advance of another 2 cents per 100 pounds was made from the yellow-pine belt to points on and beyond the Ohio and Mississippi rivers; or, in five years, the rate on yellow-pine lumber has been increased approximately 20 per cent.

Congress, in its wisdom, places a tariff duty on certain articles, so that the labor and skill of the American may be protected from the

cheap labor of the Orient and of Europe. The railroad managers, in their wisdom, give to the shipper of foreign manufactured goods, sugar, etc., a lower freight rate than that given the American manufacturer and sugar producer of Louisiana and the West, thus lessening the rate per ton per mile, but at the cost of the domestic rate.

In a hearing before the Interstate Commerce Commission, held in Atlanta, Ga., in the case of The Georgia Saw Mill Association *v.* The Southern Railway et al., the general manager of one of the southern trunk line roads testified that his road was responsible for the initiative in effecting the increase of rate on yellow-pine lumber made in 1903. He said, in substance, that, while the gross earnings of his road were increasing, and the net earnings also increasing, they were not increasing relatively. That is to say, that operating expenses were increasing so as to prevent as large an increase in net earnings as he thought his road entitled to.

In this extremity he began looking around (here I use his exact language) to see what class of freight could stand a raise. He found that the manufacturer of yellow-pine lumber was prospering, and, in an informal way, suggested to the managers of various other roads the desirability of a raise in rates on yellow-pine lumber. This suggestion met with approval, and culminated in a meeting of the three freight associations which rule, or ruin, in the yellow-pine belt, from the Carolinas to Texas, inclusive. These three associations met in the same city and on the same date. They discussed the question, but took no action. Immediately on their return home, however, the rate on yellow-pine lumber was raised by each and every general freight agent who had attended these meetings, and was made effective on the same date. And yet the gentlemen exclaim that competition will regulate domestic rates! Is there a Senator on this committee who believes any such rot? Long years since one of the Adamses of Massachusetts wrote, "Where combination is possible, competition is impossible." This is a self-evident truism, and all over the United States, in railroad and many other lines, competition has been crushed out of existence by combinations, until we are confronted by the beef trust (that innocent infant) and innumerable trusts, not least among them being the consolidated railroads of the country. It has been practically admitted by the railroad officials, and attorneys who have appeared before you, that the growth of the other trusts has been stimulated in the past by rate cuttings, by rebates to the favored few, and by various devices, to which railway management has resorted. And at last they come to you confessing their sins of the past, and asking you by legislation to protect them from the temptation of future sinning. With one voice they exclaim, "We are opposed to rebates—punish us if we grant them."

The uniform bill of lading which has been proposed by the traffic managers, but not insisted on at this time, for obvious reasons, is another effort to increase rates 20 per cent on a very large proportion of the domestic traffic of the country.

By the terms of this new bill of lading, the shipper is to surrender his rights, under the common law, of suing for damages to or for loss of goods in transit. Declining to agree in writing, to surrender such common-law rights, then he must pay the 20 per cent increase.

Without some restraining law, or some power vested in some com-

mission or court, to declare a rate or a practice unfair or unreasonable, and to establish what is a fair rate or practice, the domestic traffic of the country must pay a constantly increasing transportation tax, measured only by the greed of the railroad owners and managers or by the ability of the traffic to pay.

Let it be remembered that the cost per ton per mile of hauling freight has been greatly lessened in the past ten years.

Roadbeds have been, in many instances, practically rebuilt. Grades have been reduced, curvature lessened, heavier rails laid, bridges replaced. Weight of engines and cars more than doubled—minimum, average, and maximum loads for cars have been increased from 25 to 50 per cent. Train expenses have been decreased by greater efficiency of locomotives, by heavier trains hauled, by lessened number of trainmen. If the cost per ton per mile has been decreased, then there is no reason why the rate per ton per mile should not have been decreased.

As to the danger of enlarging the powers of the Interstate Commerce Commission so as to enable it, after full hearings, to declare what is a reasonable rate and to enforce its findings quickly much has been said. Substantially the same arguments used before this committee have been used before committees of legislatures of the various States when railroad-regulation legislation was pending. Substantially the same arguments were made before committees of Congress when the original interstate-commerce law was pending. The same dangers and nightmares have been paraded. About two-thirds of the States now have railroad commissions, and the interstate-commerce law has been in force for eighteen years. During all these years there has been a steady increase in the net earnings of the railroads and a marvelous increase in the market value of their bonds and stocks. During these years, too, there has been a system of overcapitalization, and on this overcapitalization the people have had to pay the transportation tax.

One of the ways in which this overcapitalization has been effected has been by the leasing by stronger roads of competing weaker lines and guaranteeing a fixed dividend on the stock of the weaker line. This guaranty has invariably and necessarily led to an increase in rates, for the leasing line must now make the weaker line earn not only the dividends it has guaranteed but also a fair return to the leasing line to cover its risk and cost of management.

A notable instance of this system is found in the leasing of the Mobile and Ohio Railroad by the Southern Railway. The Mobile and Ohio, extending from Mobile, Ala., to Cairo, Ill., a distance of 492 miles, with several branch lines, 284 miles in length, making a total mileage of 776 miles, was leased by the Southern Railway some four years since. By the terms of the lease the Southern Railway pays 4 per cent annually on the stock of the Mobile and Ohio Railway, and also its fixed interest charges. Prior to its being leased the Mobile and Ohio Railway had paid, since the civil war, one dividend of 1 per cent on its capital stock. Almost the immediate result was a gradual increase in rates by the Mobile and Ohio road, the increase on yellow-pine lumber being 15 per cent and on cotton-mill fabrics approximately 20 per cent. In the absence of effective governmental

regulation no one can safely predict what the future hides in the way of increased transportation taxes on domestic traffic.

Senator KEAN. You represent the Yellow Pine Association?

Mr. ROBINSON. Yes, sir.

Senator KEAN. We had Mr. Gardner here the other day.

Mr. ROBINSON. Yes. I will come to Mr. Gardner's testimony

If rates were made with a view to giving the transportation companies a fair return on the true, or approximately true value of their properties, and, at the same time, giving to every section of the country the benefit of natural advantages, all parties should be satisfied.

As I have read the decisions of the Interstate Commerce Commission, I have been deeply impressed with its endeavor to guard the interests of both the transportation companies as well as the public, and at the same time not deprive any city or section of its location or natural advantages in any particular.

First. In the case of Morrell *v.* The Union Pacific Railroad Company (p. 121, sixth report of I. C. C.), the following language is used:

" Rates maintained and which may be reasonable under the conditions existing in one section or part of the country afford no safe criterion by which to measure reasonable charges in other localities where the expense of operating a road and other conditions affecting transportation are widely different."

Second. In the case of The Minneapolis Chamber of Commerce *v.* The Great Northern Railway Company (p. 571, fifth report of I. C. C.), the following language is used:

"A milling town possessing great natural and acquired and improved advantages for the carrying on of that industry and favorably situated in point of distance to a large grain-producing region is entitled to the benefits arising from its location, and carriers of grain to that point and to a competing town considerably more remote from points of production and in other particulars less advantageously located are not justified in making rates on grain to the competing towns, which destroy the advantage the former is entitled to enjoy."

Third. In the case of The Cincinnati Freight Bureau *v.* The Cincinnati, New Orleans and Texas Pacific Railroad Company (p. 180, seventh report, I. C. C.), the following language is used:

"A city is entitled to benefits arising from its location, and the fact that it enjoys exceptional advantages in one respect is no reason why it should be subjected to discrimination in other respects."

What may be a fair and remunerative rate for roads leading from New Orleans up the valley of the Mississippi and across the prairies of Illinois to Chicago, a distance of, say, 925 miles, may be much too low for a road running from New York to Chicago, practically the same distance, crossing the mountains, and necessarily operating at a greater cost, and burdened with much greater fixed charges. So that, in fairness to all sections, the Commission has properly ruled that each section and city should not be deprived of its natural advantages. There never can be any justification for basing, uniformly, rates on mileage. Such a course might bankrupt some roads and give to others an unduly large return.

The direct granting of rebates has been stopped practically by the law which bears the name of the distinguished chairman of this committee. This legislation was quite as much in the interest of the transportation lines as in the interest of the shipper.

But there still remains the indirect rebate; or, if you please, the almost innumerable forms of discrimination, which are difficult to reach by legislation, and in the practice of which some of the traffic managers are unquestionably experts.

I believe your attention has been called to the private car line abuse, to the short terminal road abuse, and possibly to other abuses; so I will merely call your attention to a few that have come under my personal observation.

First. Very generally, purchasing agents have been instructed to buy supplies from parties who are large shippers over their respective lines, and there is a great possibility of the direct rebate being given through the office of the purchasing agent.

Second. The absorption of switching charges at terminal points on shipments which originate at competitive points, and the refusal to absorb switching charges where the shipment originates at noncompetitive points.

At Cincinnati there is a large buyer of lumber whose yard is on "Hazen's switch." Said switch is located on the Cincinnati, Lebanon and Northern Railway, and to reach said switch from the tracks of the Louisville and Nashville road cars must pass over the Eggleston avenue track of the P., C., C. and St. L. Railway, and thence over the Cinn., L. and N. Railway. These roads charge the Louisville and Nashville $6.50 to $9 per car for switching, and on lumber which originates at noncompetitive points on the Louisville and Nashville Railway the producer must pay this switching in addition to the regular published tariff rate; but if the lumber originates at a competitive point, then the Louisville and Nashville Railway pays this switching charge and by so much depletes its tariff rate.

The Louisville and Nashville road defends this practice in the following language:

"Respondent avers and says that this practice of absorbing switching charges when lumber in carloads is shipped from competitive points on respondent's line to Hazen's switch applies not only to Birmingham, Selma, and Montgomery, but to many other competitive points in the South.

"Respondent avers and says that the absorption of these switching charges is forced upon it by its competitors from said competing points, who participate in this class of traffic, and who absorb said switching charges in order to obtain the business, or who may reach said point of delivery with their own rails, and make delivery without any terminal expense to consignees or shippers."

Third. The promulgation of special tariffs for the benefit of favored shippers. To illustrate: Early in the year 1905 the South Side Elevated road of Chicago was in the market for about 400 carloads of sawed and planed cross-ties, and bidders were asked to name a price f. o. b. Chicago. The blanket rate on ties and lumber (and such ties are nothing but one kind of lumber) from the entire yellow-pine belt to Chicago is 26 cents per 100 pounds. A number of bids were submitted to the South Side Elevated road, and, so far as I

can learn, all the bids were rejected as being too high. Effective March 22, 1905, the Illinois Central road issued its tariff B-12013, I. C. C. No. 3153, in which tariff a rate of 26 cents per tie is named on yellow-pine ties to Chicago from Luzon, La., to Pearl, Miss. (a distance of about 100 miles). The tariff contains a provision reading: "Cars must be loaded to full loading capacity, but not in excess of 10 per cent beyond their marked weight capacity. Ties to be billed at 165 pounds per tie." On April 6 the Illinois Central Railroad promulgated another tariff (C-12013, I. C. C. No. 3171) canceling the previous tariff. The new tariff named the same rate per tie, the only difference being that the weight is given as 130 pounds per tie instead of 165 pounds per tie. Assuming that the weight per tie, as given in the last tariff is correct, this makes a cut from the regular tariff on lumber of 6 cents per 100 pounds, or reduces the lumber rate from 26 cents per 100 pounds to 20 cents per 100 on this particular class of lumber and on this particular piece of road.

Senator KEAN. What was the abuse there?

Mr. ROBINSON. The men who owned mills or lumber roads on other sections of the road can not compete for that business, because in one instance the manufacturer pays 26 cents per hundred pounds, and in the other he pays practically 20 cents per hundred pounds.

Senator FORAKER. I thought you said 26 cents per 165 pounds, in the first instance.

Mr. ROBINSON. In the first tariff they specified that the weight of the tie should be considered 165 pounds. Evidently that was a mistake of some one connected with the road, because the tie could not possibly weigh that much; so, almost immediately—within a week—that mistake was discovered and a new tariff was issued and the first tariff was canceled, the second tariff being identical with the first, except that they said the tie would weigh 130 pounds.

Senator FORAKER. So that it is not an advance of the rate, but the correction of a manifest mistake in the tariff.

Mr. ROBINSON. The second tariff was a correction, but on this particular 100 miles of road it was a reduction of the rate on this particular kind of lumber from 26 cents per hundred pounds to 26 cents per tie, the tie weighing 130 pounds.

Senator FORAKER. So your complaint there is that the rate was reduced below what was fair.

Mr. ROBINSON. The complaint is that the rate was reduced to a particular mileage of the road; that it was reduced on a particular kind of lumber. That is to say, the railroad, by issuing this tariff, lay themselves liable, it seems to me, to the suspicion that some one in Chicago who got the order for these 400 cars of ties possibly knew that this rate would be put into effect, and, of course, he could underbid all his competitors and still make a handsome profit.

Senator KEAN. Did some one on that line of road get that contract?

Mr. ROBINSON. I really do not know. I have not pursued the investigation. I have heard, however—I do not state it exactly—I have heard of a Chicago broker, a middleman or a commission man, got it, but that I do not know.

Senator KEAN. And the lumber was furnished from that region and territory?

Mr. ROBINSON. Well, you see it has been a very recent matter, occurring on April 6, and I really have not kept up with it.

Senator FORAKER. However that may be, the truth is that the thing you are complaining about is a reduction in the rate instead of an advance, in the particular case cited.

Mr. ROBINSON. Yes; we naturally complain that on a particular section of a particular road a particular special tariff is made, to the detriment of all other manufacturers on all other roads and on the same road except this particular 100 miles.

Senator FORAKER. What road did that 100 miles belong to?

Mr. ROBINSON. The Illinois Central.

Senator FORAKER. What is the name of this particular line of 100 miles?

Mr. ROBINSON. It is the distance between Luzon, Tenn., a stretch on the Illinois Central road, and Pearl, Miss., a switch, I think, about 5 miles south of Jackson, Miss.

Fourth. The abuse of the milling in transit privilege.

For a number of years all the roads in the yellow-pine region west of the Mississippi River have given to sawmills operating on their lines and having logging roads an allowance of from 2 cents to 4 cents per 100 pounds of the through rate; roads east of the Mississippi River, with the exception of the Mobile and Ohio Railway, have declined to make to mills on their lines any allowance whatever, or allow them any participation in the through rate, notwithstanding that some of the mills in Mississippi have logging roads 30 to 40 miles in length. This practice is unfair, and gives to the manufacturer of yellow-pine lumber enjoying such a participation in the through rate an advantage of from 60 cents to $1.80 per 1,000 feet B. M. in freight allowance.

Now, responding to the suggestion of Senator Kean respecting Mr. Gardner, it was on this complaint, or on two complaints made, respectively, by the Central Yellow Pine Association, with which association I am connected, and by the Georgia Sawmill Association, embracing Georgia and some parts of Alabama, that the injunction proceedings were entered into almost simultaneously. The Georgia Sawmill Association applied to Judge Spear, of the United States circuit court, for an injunction, as we did in Mississippi and Alabama to United States Circuit Judge Niles, at Jackson, Miss. Judge Spear, at Atlanta, entertained the injunction, and we had this anomalous condition of affairs for some time—for four or possibly six weeks, I think, it lasted. On the west of us—that is, I am speaking now of the manufacturer in Mississippi—our competitors were getting an allowance on account of being a logging road, which we were just as much as they, of 2 to 4 cents a hundred pounds, and on the east of us the Georgia lines and in eastern Alabama, acting under the injunction granted by the Atlanta judge, were operating under the old tariff, so that that middle territory was being squeezed on the one side by the tap-line alliance, and on the other side by the operation of the injunction.

Finally, however, the injunction in Georgia was dissolved, or the injunction in Mississippi, while it never went into operation, but practically it was also refused. When I say that the injunction in Mississippi never practically went into operation I mean this: While the injunction was held, an order was made allowing the railroads to

go on with a new tariff, with a counter agreement that in the event after hearing the case was decided against them, they would refund the extra amount. I notice that the decision of the Mississippi judge has been placed in the record. If the committee would care to have it, I have here the bill and the decree and also the answer of the railroad companies. Does the committee desire to go further into that matter?

The CHAIRMAN. You may just submit it, and it will be printed in the record.

Senator FORAKER. Yes; put in the answer and the judgment of the court, the decree or whatever it was, together with the opinion.

The papers referred to are as follows:

United States circuit court, eastern district of Louisiana.

C. W. ROBINSON LUMBER COMPANY ET AL. *vs.* THE ILLINOIS CENTRAL RAILROAD COMPANY ET AL.	In equity.

To the honorable the judges of the said court:

The C. W. Robinson Lumber Company, a corporation organized and existing under the laws of and a citizen of this State, domiciled in the city of Meridian, in the southern district; the Camp & Hinton Company, a corporation organized and existing under the laws of and a citizen of the State of Mississippi, domiciled at the town of Lumberton, in the southern district; the Fernwood Lumber Company, also a corporation organized and existing under the laws of the State of Mississippi, and domiciled at Fernwood, in this the southern district; Eastman, Gardiner & Company, a corporation organized and existing under the laws of Iowa, domiciled at the city of Clinton, in the said State, and John J. White, a citizen of the State of Mississippi, residing at the town of McComb, in this the southern district, complainants, exhibit this their bill of complaint on behalf of themselves and all of the members of the Yellow Pine Association, a voluntary association of corporations, firms, and persons each and all engaged in the manufacturing, shipping, and sale of pine lumber in the States of Mississippi, Alabama, and Louisiana east of the Mississippi River, and all of whose names are set out in the list herewith filed and made part of this bill, against the Illinois Central Railroad Company, a corporation and citizen of the State of Illinois, but doing business and having agents in this State and within this district amenable to process; the New Orleans and Northeastern Railway Company, a corporation and citizen of the State of Louisiana, but doing business and having agents in this State and district upon whom processes may be served; the Mobile and Ohio Railroad Company, a corporation and citizen of this State; the Alabama and Great Southern Railroad Company, a corporation and citizen of the State of Alabama, doing business and having agents subject to process in the State of Mississippi and in this district; the Southern Railway Company, a corporation and citizen both of the State of Virginia and the State of Mississippi, and having agents in this State upon whom process may be

served; and the Gulf and Ship Island Railroad Company, a corporation and citizen of the State of Mississippi, domiciled in the southern district; and against the Southeast Mississippi Valley Association, a voluntary association or partnership composed of the before-named railway companies and others, with its principal office in the city of Louisville, State of Kentucky, and of which one M. P. Washburne, a citizen of Louisville, in the State of Kentucky, is chairman and the authorized representative, defendants, and thereupon humbly complaining your orators show unto your honors as follows, to wit:

I. That your orators and all other manufacturers of yellow-pine lumber in the States of Mississippi, Louisiana east of the Mississippi River, and Alabama, exceeding 20 in number, constitute the membership of the Central Yellow Pine Association, which your orators aver to be a voluntary association organized and maintained for promoting and protecting, by proper and lawful means, the interest of the yellow-pine lumber industry in the States named.

II. The defendants, and each of them, are common carriers engaged, among other things, in interstate commerce by the transportation of lumber from points within to points without the State of Mississippi; and each of them maintains and operates lines of railway within the State of Mississippi employed in such transportation of articles of commerce between the States.

Your orators aver, on information and belief, that each of the said railway companies is a member of the Southeast Mississippi Valley Association; and that said association was organized and is maintained under agreements and for purposes which constitute an illegal combination in restraint of interstate trade, and for the fostering of monopoly in destruction of the fair competition among themselves and other carriers engaged in interstate trade.

III. Each of the defendant railway companies has given notice of and put in force April 15, 1903, a revised tariff of freight rates on lumber from points of shipment in the States of Mississippi and Louisiana to points on and north of the Ohio and east of the Mississippi River and west of Buffalo and Pittsburg, whereby the previously existing rate on yellow-pine lumber from and to the points designated has been increased two (2) cents a hundred (100) pounds; and your orators aver that such increased rate so put into effect on the day named will be continued unless restrained by an order of this honorable court. Your orators charge that in promulgating said tariff of increased rates the several defendant railway companies acted in concert with each other and with other lumber-carrying roads that are members of the Southeast Mississippi Valley Association in pursuance of unlawful agreements between said railway companies in restraint of competition and of interstate trade.

IV. Your orators show that their rights and interests, in common with those of others engaged in the lumber trade of this State, will be and is vitally and injuriously affected by the said increase of rates; that such increase is unjust, unreasonable, and arbitrary, and will prove destructive to the business of your orators and defeat competition within a large territory comprised of Ohio River points and points beyond in the Central, Northern, and Western States, and imposes upon the yellow-pine industry a burden out of line with and far more grievous than that sustained by the products of other indus-

tries of like weight and value. There is invested by your orators and others, members of the Central Yellow Pine Association, approximately fifty million (50,000,000) dollars in the production and manufacture of yellow-pine lumber. The annual output is estimated at one thousand million feet (1,000,000,000), of the value at the mills of ten million dollars ($10,000,000). Not less than 75 per cent, or 750,000,000 feet, of the value of seven million five hundred thousand dollars ($7,500,000), is shipped to the territory above mentioned and is directly and injuriously affected by the said increase in rate. This increase of two (2) cents a hundred (100) pounds equals from (60) sixty to (90) ninety cents a thousand (1,000) feet, depending upon the quality of the lumber, and will amount to from seven hundred thousand (700,000) dollars to eight hundred thousand (800,000) dollars annually in additional freights on the lumber shipped to the territory affected.

V. Your orators show that the said increase in rate is unjust, unreasonable, contrary to the provisions of the act of Congress to regulate commerce, commonly called the "interstate-commerce law," approved February 4, 1887, and the several acts amendatory thereof or supplemental thereto, and arbitrary in this, to wit:

1. Under the previously existing rates lumber was a very profitable commodity to the carrier, if not the most profitable of any freight originating in the southern territory, value, tonnage, and cost of handling considered. The average freight on yellow-pine lumber from the mills to the point of destination amounts in the aggregate to a sum fully or nearly equaling the value of the product at the point of shipment. From points in the State of Mississippi alone nearly or quite ten million ($10,000,000) dollars is annually paid the carriers for transportation to market on lumber valued at the mills at about the same. The product annually shipped to the territory directly affected by the said increase in rate is at the mills of the value of about seven million five hundred thousand ($7,500,000) dollars; the cost of transportation to the points of delivery on and beyond the Ohio River in some instances exceeds and is usually nearly the value of the product. The previous rate on lumber was without said increase greater per ton per mile than on coal, pig iron, cement, and other like products, value, weight, and cost of handling considered. The quality of lumber shipped to the territory involved is largely of low grade. For the transportation of a very large portion of this the carrier furnishes a naked platform or flat car, which the shipper is required to equip with standards, strips, and suports, which are required to be made of high-grade lumber, and which involves the cost to the shipper of from two and one-half dollars a car to three dollars a car, aggregating on shipments from Mississippi alone from fifty thousand (50,000) dollars to one hundred thousand (100,000) dollars per annum. In addition to this the shipper is required to pay freight on the increased weight caused by the equipment, amounting to an average of two dollars a car. Your orators submit that no other commodity is subjected to such rates and burdens, and that the same are unfair and unjust.

2. Your orators and other manufacturers of southern yellow-pine lumber have, within recent years, by persistent effort and at great expense, created a market for their product within a large territory,

consisting of the States of Ohio, Illinois, Indiana, Wisconsin, and parts of New York, Pennsylvania, Michigan, and Iowa. Within this territory they come into direct competition with the hemlock, spruce, and white pine of Canada and the Northern States and with the woods of the Pacific coast, as well as cottonwood and cypress and other woods from Mississippi and Louisiana. They have been able to meet this competition only with low grades of lumber, for which the market elsewhere is restricted. Having thus acquired a market for this grade of their product, they have increased their investments of capital and have correspondingly enlarged their output. Orators attach hereto, marked "Exhibit B," a sketch or map indicating the territory referred to. To points within this territory the rates on yellow pine are without this increase greater than on other woods. The rate on Pacific coast fir is four and one-tenth (4.1) mills to five and three-tenths (5.3) mills per ton per mile, and on white pine from northern points is four and seven-tenths (4.7) mills per ton per mile, while on yellow pine the rate is from five and three-tenths (5.3) to six and five-tenths (6.5) mills, and the said increase of two cents per hundred has raised the rate to five and seven-tenths (5.7) to seven and three-tenths (7.3) mills per ton per mile. From which it appears that yellow pine is now paying from thirteen (13) to forty (40) per cent more than the carriers of white pine demand for that product.

White pine, cottonwood, and fir are of lighter weight than yellow pine, so that the discrimination in their favor is even greater than is apparent from the figures alone. No increase has been made in these rates on other woods, yellow pine being singled out as the sole subject of the increase. Should the increased rate be maintained the manufacturers of yellow pine will be unable to compete with other woods in the market of the territory designated and will be compelled to retire therefrom. Thus the market for low-grade yellow pine, which has been acquired at great cost, will be destroyed, and the capital invested for the production of lumber to meet the demand created will be lost, and the large product already manufactured and on hand will be largely worthless for want of a market, and your orators' business is already falling off by reason of said increase.

3. The cost of the production of yellow-pine lumber has materially increased, while the market value of the manufactured product has remained practically the same. There has been no increase in the prices of lumber over those obtainable January 1, 1902. The increased cost consists in the items of raw material, labor, and feed of stock, all of which have materially advanced in price and seriously affect the cost of the manufactured product. The carriers have for a considerable period utterly failed to furnish cars sufficient for the transportation of lumber, thereby causing congestion at manufacturing points, thus materially increasing minimum cost of production and reducing the profits of the business. On the contrary, while the defendants pretend that the state of their business compels them to put on this increase their net revenues have been rapidly and steadily increasing, while the added cost of transportation has been as constantly offset by the increased capacity of cars and locomotives and by use of modern appliances which dispense with the employees necessary to operate trains.

4. The increased rate, as well as that existing, is further arbitrary, unjust, and discriminatory in this, that the rate from Mississippi points to Ohio River points and beyond is from two to five cents per hundred higher than rates from points in Arkansas and Louisiana west of the Mississippi River through disguised rebates, thus: From McComb City, Mississippi, on and by the Illinois Central Railroad, to Chicago the rate is 26 cents and the distance 810 miles, while from Stamps, Arkansas (the lumber being carried partly over the Illinois Central Railroad), the rate, nominally 26 cents, does not exceed 21 cents per one hundred pounds on account of said disguised rebate in the shape of a tap-line division of 5 (five) cents per one hundred pounds, the distance being practically the same. Your orators charge that such discrimination is arbitrary and without reason or justification to sustain it.

5. The increase in rate is arbitrary and discriminatory in that it is made to apply to yellow-pine lumber only and does not include other woods or articles, although said defendants carry the same. Your orators show that within the past four years the rate on lumber between the points designated has already been increased two cents per hundred, and in some cases three cents per hundred, and they submit that if existing conditions justify or require the raising of revenue on the part of the carriers the tariff necessary to bring such revenue should be laid upon the various products with regard to equality and fairness, and that yellow-pine lumber should not be singled out to bear the whole burden, and especially so inasmuch as it appears that the previous rate on yellow-pine lumber is greater and produces more revenue to the carriers than any other like product, weight, value, and tonnage and cost of transportation considered.

VI. For special cause why an immediate temporary restraining order should be issued your orators show that before receiving notice of the proposed increase in rate large contracts were entered into by some of them for the delivery of lumber to points within the territory to be affected by the increased rate; that your orators have been unable to fill these orders because of the fact that the railway companies have utterly failed to provide equipment sufficient to move the manufactured product, so that your orators have now and for some time have had on their skids a large quantity of lumber awaiting transportation in order to be delivered in accordance with existing contracts, which would have been delivered had the carriers furnished transportation.

VII. Your orators charge upon information and belief that the Southeast Mississippi Valley Association is employed by the defendant railway companies and other carriers as an irresponsible medium through which to effect a lessening of competition, and in legal contemplation constitutes a combination and conspiracy in restraint of commerce between the States. Your orators are informed that while nominally any railway company, being a member of the association, may fix its own rates and promulgate its own tariffs, and is not bound by any written contract to change its rates so as to conform to the rates of other carriers, yet in point of fact there is an understanding generally acted upon under which these results are brought about. Thus in the matter of increased rates on lumber the various lumber-carrying roads have acted in concert and have acted through

the said association, and have singled out this commodity as that upon which this extra burden should be laid, notwithstanding that some, if not many, of the roads would derive an equal or greater benefit from the laying of increased rates upon other products. Your orators further aver that although by the act of Congress entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1900, they are entitled to recover treble damages for the injury inflicted by reason of said conspiracy, their damage can not be readily or clearly shown is incapable of actual ascertainment, is going on every day, and even could they have a remedy at law it would involve a multiplicity of vexatious suits by each of them, whereas the issue of said conspiracy and its unreasonable and damaging effect, as affecting all of your orators and others similarly circumstanced, can be readily determined in one suit in equity. In consideration whereof and for as much as your orators are remediless at and by the strict rule of the common law and can obtain relief only in a court of equity where matters of this kind are properly cognizable and reviewable.

To the end, therefore, that your orators may have relief, which they can only obtain in a court of equity, and that the defendants herein named may answer the premises, but not upon oath or affirmation, discovery and answer under oath being hereby expressly waived, your orators pray:

1. That the court will grant an order temporarily restraining the defendants, and each of them, from continuing in effect the said increase of rates, or any increase of rates, on yellow-pine lumber from points within to points without the State of Mississippi, such order to be effective until the further order of the court.

2. That the court will issue a rule directed to the defendants, and each of them, commanding them, and each of them, to be and appear before one of the judges of this court at such time and place as the court may designate, then and there to show cause why the extraordinary relief prayed for should not be granted and a perpetual injunction issue.

3. That upon the hearing under the rule the court will decree that a writ of injunction do issue enjoining the defendants, and each of them, from continuing in effect and operation the said increase of freight rates on yellow-pine lumber from points within the State of Mississippi to points without the State, and especially to points within the territory above mentioned and described in said map and to Ohio River points, and points beyond west of Buffalo and Pittsburg, and also from at other times or in other ways increasing the previously existing rates from and to such points without previous application to this court for a modification of the injunction.

4. That the court will decree that the existing rates between the points designated are unjust, unreasonable, and illegal, in so far as they discriminate against Mississippi points in favor of points in Arkansas and Louisiana west of the Mississippi River on yellow-pine lumber and also in so far as they discriminate in favor of the other woods in the same territory and impose upon the shipper of lumber the burden of equipping cars at the expense of the shipper, and that appropriate relief to this end may be granted.

5. That the Southeast Mississippi Valley Association be declared

an illegal combination in restraint of interstate trade, and that the defendant railway companies be enjoined from prosecuting the purposes of such illegal combination through the medium of the said association in so far as concerns the transportation of lumber to and from points directly affecting the rights and interests of your orators.

6. That your orators may have such other and further and general relief as the nature of the circumstances of the case may require and to the court shall seem meet and proper.

7. That the writ of subpœna be issued to be directed to the said Illinois Central Railroad Company, the New Orleans and Northeastern Railway Company, the Mobile and Ohio Railroad Company, the Alabama and Great Southern Railroad Company, the Southern Railway Company, the Gulf and Ship Island Railroad Company, and the Southeast Mississippi Valley Association, and M. P. Washburne, chairman thereof, commanding them, and each of them, at a certain day and under a certain penalty therein to be limited, personally to appear before this honorable court, and then and there full, true, direct, and perfect answer make to all and singular the premises (but not under oath, answer under oath being hereby expressly waived), and to stand, to perform, and abide such other order, direction, and decree as may be entered against them in the premises, as shall seem meet and agreeable to equity.

T. M. MILLER,
Solicitor for Complainants.

STATE OF LOUISIANA, *Parish of Orleans.*

In person appeared before the undersigned C. W. Robinson, who being duly sworn deposes and says that he is president of the C. W. Robinson Lumber Company, one of the complainants named in the foregoing bill, that he has read said bill and knows contents thereof, and that the facts therein stated of his own knowledge are true except facts stated upon information and belief, and as to such he verily believes them to be true.

C. W. ROBINSON.

Sworn to and subscribed before me this the 29th day of April, 1903.

[SEAL.] FRED. C. MARX,
Notary Public.

STATE OF LOUISIANA, *Parish of Orleans.*

Before me, the undersigned notary public, in and for said parish and State, personally came and appeared George S. Gardiner, who, upon being by me first duly sworn, did depose and say that he is the president of the Eastman, Gardiner & Co., one of the corporations in the foregoing bill; that he has read the said bill, and is familiar with the contents thereof, and that he has good reason to believe, and doth verily believe, that all the facts therein stated are true in substance and in fact as stated; that all the said matters which are alleged upon complainant's own knowledge are true, and such as are stated upon information derived from others he verily believes to be true. Affiant further states that the said increase of rates is now being daily collected from affiant's said company and other members of said association. He further states that early in February, 1903, the said company received notice from the Gulf and Ship

Island Railroad Company, a connection of the Illinois Central Railroad Company, that said increase of freight would be put into effect March 1, and he has seen similar notices sent out by the other defendants to sawmill owners along their lines all about the same time; that said defendants, together and in concert, agreed to postpone the effectiveness of said increase until April 15, 1903, but that, notwithstanding representations against the injustice of the said advance made to them on behalf of the yellow-pine interest, they have adhered to their declared purpose to exact the same from the 15th day of April, 1903.

Affiant further states, in proof of the concert and prearrangement among the said defendants and other carriers of yellow-pine lumber from the South, all the railroad companies running through the entire yellow-pine region in Arkansas, Louisiana, Mississippi, Alabama, and Georgia gave notice at or about the same time to all their patrons that said increase would be made, and all did so accordingly, except that in Georgia the railroad companies have been enjoined.

GEORGE S. GARDINER.

Sworn to and subscribed before me this the 30th day of April, 1903.

[SEAL.] CHAS. F. FLETCHINGER, *Notary Public.*

ORDER.

Upon reading and considering the verified bill presented in the above-entitled cause, jurisdiction thereof is hereby entertained, and the bill is ordered to be filed in the office of the clerk of this court at Jackson, in said district.

And it appearing from the allegations of said bill that irreparable injury may result to the complainants unless an immediate restraining order be granted, inasmuch as otherwise the increase in rates put into effect by the defendants on April 15, 1903, will be continued every day.

It is thereupon ordered that the defendants named in said bill, and each of them be and appear before me at the United States court room in the city of Jackson, Mississippi, on the 15th day of May, 1903, at 10 o'clock in the forenoon, then and there to show cause, if they can, why an injunction should not be granted as prayed in the bill.

It is further ordered that the defendants and each of them, be and they are hereby severally and jointly restrained temporarily from continuing in effect the increase set forth in the bill of rates of freight on yellow-pine lumber from points within to points without this State, or to points on the Ohio River and beyond or on and east of the Mississippi River, in accordance with the prayer of the bill for a temporary restraining order; this order to remain in force until the hearing, or until otherwise ordered by the court.

It is further ordered that the defendants, and each of them, be served with this order, at least five days before the hearing, within this district, or within any portion or division of this district.

Dated and signed at chambers, this 1st day of May, 1903.

H. C. NILES, *U. S. Judge.*

In the circuit court of the United States for the southern district of Mississippi.

C. W. ROBINSON LUMBER CO., ET ALS.
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET ALS.

The demurrer of the Illinois Central Railroad Company, the New Orleans and Northeastern Railroad Company, the Alabama and Great Southern Railroad Company, the Southern Railway Company, and the Gulf and Ship Island Railroad Company, defendants, to the amended and supplemental bill filed herein by C. W. Robinson Lumber Company, and others.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said plaintiff's bill to be true in such manner and form as the same are therein set forth and alleged, do demur thereto, and for cause of demurrer show that the said plaintiffs have not, in any way by virtue of their said bill, made or stated any such cause as doth or ought to entitle them to any such relief as is therein sought and prayed:

First. Because it appears by the allegations of said bill of complaint that the same does not present a controversy between citizens of different States, but presents a controversy between citizens of Mississippi, as plaintiffs, and citizens of Mississippi and citizens of other States, as joint defendants, and said bill of complaint does not set up any controversy between said plaintiffs and said defendants arising under the Constitution or laws of the United States.

Second. Because the facts stated in said bill of complaint show no case of which the United States circuit court for the southern district of Mississippi has jurisdiction in equity.

Third. Because it appears from the allegations in said bill that the said plaintiffs have not made or stated such cause as entitled them to the relief sought and prayed for against these defendants in a court of equity of the United States.

Fourth. Because it does not appear from the allegations in said bill of complaint that the same is brought or filed under any statute of the United States, and the same doth not set forth facts showing that the complainants, or either of them, are entitled to maintain any bill of complaint against these defendants, or any of them, under any statute of the United States.

Fifth. Because it appears from the said complainants' bill of complaint, and upon the face of said bill, that the said plaintiffs have each an adequate and complete remedy at law for the said several alleged wrongs in said bill of complaint set up against these defendants.

Sixth. Because it appears by the allegations of said bill of complaint that the same is brought to restrain an alleged contract, combination, or conspiracy in restraint of trade or commerce among the several States, and to monopolize a part of the trade or commerce among said several States, in contravention of the statutes of the United States, and that under said statutes of the United States neither said plaintiffs nor any individual have any right to any

relief in equity, but are restricted to the remedy at law provided by said statute.

Seventh. Because the allegations of said bill of complaint do not show that the said plaintiffs, or either of them, are entitled to maintain any action under the statute of the United States entitled "An act to regulate commerce," and acts amendatory thereof.

Eighth. Because the granting of the injunction sought in this case would, in effect, fix the rate to be charged by the defendants in the future for the transportation of lumber from Mississippi points to points on the Ohio River and beyond at the rates now prevailing as the maximum rates. That the right to fix such rates is a legislative power and not a judicial one, and a decree so fixing said rates is beyond the power and jurisdiction of the court.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, these defendants demur thereto, and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to the said bill, and pray to be dismissed with their costs and charges in this behalf most wrongfully sustained.

EDWARD MAYES,
for Defendant, Illinois Central R. R. Co.
E. L. RUSSELL,
S. R. PRINCE,
for Defendant, Mobile and Ohio R. R. Co.
H. H. HALL,
JNO. W. FEWELL,
MCWILLIE & THOMPSON,
Attys. for Defendant, New Orleans and Northeastern R. R. Co. and for Alabama and Great Southern R. R. Co.
CATCHINGS & CATCHINGS,
Attys. for Southern Railway Company.
E. J. BOWERS,
Atty. for Gulf and Ship Island Railroad Co.
MAYES & HARNS,
Attys. for Illinois Central R. R. Co.

UNITED STATES OF AMERICA, *Southern District of Mississippi, County of Hinds:*

T. P. Hale, 2nd vice-president of the Gulf and Ship Island Railroad Co., makes solemn oath and says that said railroad is one of the above defendants, to wit: ——— ——— Company, and that the foregoing demurrer is not interposed for delay.

T. P. HALE.

Sworn to and subscribed before me this 15th day of June, 1903.
[SEAL.] J. H. SULLIVANT, *Circuit Clerk.*

I hereby certify that, in my opinion, the foregoing demurrer is well founded in point of law.

E. J. BOWERS,
EDWARD MAYES,
Atty. for Ill. Cent. R. R. Co.

In the circuit court of the United States for the southern district of Mississippi.

C. W. ROBINSON LUMBER CO. ET AL.
v.
ILLINOIS CENTRAL RAILROAD COMPANY.
} In equity.

Amended and supplemental bill.

To the honorable the judges of said court:

C. W. Robinson Lumber Company, a corporation organized and existing under the laws and a citizen of the State of Mississippi and domiciled in the city of Meridian in the southern district; the Camp & Hinton Company, a corporation organized and existing under the laws and a citizen of the State of Mississippi, domiciled at the town of Lumberton in the southern district; the Fernwood Lumber Company, a corporation organized and existing under the laws of the State of Mississippi and domiciled at Fernwood in the southern district; Eastman, Gardner & Company, a corporation organized and existing under the laws of the State of Iowa, domiciled at the city of Clinton in the said State, and John J. White, a citizen of the State of Mississippi, residing at the town of McComb in the said southern district, complainants, exhibit this their amended and supplemental bill of complaint, by leave of the court first had and obtained, on behalf of themselves and all of the members of the Central Yellow Pine Association, a voluntary association of corporations, firms, and persons, each and all engaged in the manufacturing, shipping, and sale of pine lumber in the States of Mississippi, Alabama, and Louisiana, east of the Mississippi River, and all of whose names are set out in a list herewith filed and made a part of this bill as if specifically copied herein, against the Illinois Central Railroad Company, a corporation and citizen of the State of Illinois, but doing business and having agents in this State amenable to the process of this court; the New Orleans and Northeastern Railroad Company, a corporation and citizen of the State of Louisiana, but doing business and having agents in said district; the Mobile and Ohio Railroad Company, a corporation and citizen of the State of Mississippi; the Alabama and Great Southern Railroad Company, a corporation and citizen of the State of Alabama, doing business and having agents subject to process in the State of Mississippi in said district; the Southern Railway Co., a corporation and citizen of the State of Mississippi and having agents in this State upon whom process may be served; and the Gulf and Ship Island Railroad Co., a corporation and citizen of the State of Mississippi, domiciled in the southern district of Mississippi; and against the Southeast Mississippi Valley Association, a voluntary association or partnership, composed of the before-named railroad companies and others, with its principal office in the city of Louisville, State of Kentucky, and of which W. P. Washburn, a citizen of Louisville, in the State of Kentucky, is chairman and the authorized representative of defendants, and thereupon humbly complaining your orators in this their amended and supplemental bill would show unto your honor as follows:

I. That the orators and all other manufacturers of yellow-pine lumber in the States of Mississippi and of Louisiana east of the Mississippi River and of Alabama, exceeding twenty in number, constitute the membership of the Central Yellow Pine Association, which your orators show to be a voluntary association organized and maintained for promoting and protecting, by proper and lawful means, the interests of the yellow-pine lumber industry in the States named against all unlawful exactions, and especially against unlawful, exorbitant, and arbitrary freight rates to their markets in other States.

II. The defendants railroad companies and each of them are common carriers of freight and passengers for hire, and among other things engaged in interstate commerce by the transportation of lumber by railroads from points within to points without the State of Mississippi; and each of them maintains and operates lines of railway within the State of Mississippi employed in such transportation of articles of commerce, and especially of lumber between the States, and said railroads constitute and are the only means available for the transportation of the products of complainants to market, where, as hereinafter shown, they are compelled to dispose of the same, and that your orators must depend solely upon said railroads to carry and transport the products of their mills to market.

Your orators aver on information and belief that each of said defendant railroad companies is a member of the Southeast Mississippi Valley Association, and that said association was organized and is maintained, under agreement, for purposes which constitute an illegal combination in restraint of interstate trade and for the fostering of monopoly in the destruction of competition among themselves and other carriers engaged in interstate trade. That said association is an unlawful combination under the acts of Congress, and it has for one of its chief objects the prevention of competition in rates for transportation of interstate trade and the regulation and making of freight rates in violation of the statutes of the United States and greatly to the detriment and injury of your orators.

III. That in pursuance of and as a result of the machinations and unlawful agreements of said defendant railroad companies, made under and through said unlawful association, said railroad companies did put in force and effect, under date of April 15, 1903, a revised tariff of freight rates on yellow-pine lumber from points of shipment in the States of Mississippi and Louisiana to points on and north of the Ohio River and east of the Mississippi River and west of Buffalo and Pittsburg, a territory which constitutes the chief available market for the largest part of complainant's yellow-pine lumber output, and whereby the previously existing freight rates on yellow-pine lumber from and to the points designated has been increased 2c., 3c., 4c., and 5c. a hundred pounds, according to the location of the point of destination; and your orators aver that such increased freight rate, so heretofore put in force and effect, is now in effect and is being daily exacted of and paid by your orators, and will so continue, unless restrained by an order of this honorable court, to the irreparable injury to their business and to their property.

Your orators state that in promulgating and making said unreasonable, unlawful, and arbitrary increase in rates the said several

defendant railroad companies unlawfully, and contrary to the Federal statute in that behalf, acted in concert with each other, and with other lumber-carrying roads that are members of the said Southeast Mississippi Valley Association; and that said unlawful increase in rates was made in pursuance of, and was an unlawful agreement between, said defendant railway companies and others in restraint of trade, of competition, and of interstate commerce; and that the same could not have been brought about and created without said unlawful agreement and combination of said defendants acting together through said Southeast Mississippi Valley Association.

IV. Your orators show that their rights and interests will be and are vitally and injuriously affected by the said increase in rates; that such increase is unjust, unreasonable, arbitrary, and unlawful, and will prove destructive to the business of your orators, and destroy, in a very large measure, the value of their properties by rendering inaccessible to them and their products the only market available, and will defeat competition within a large territory comprised of Ohio River points, and beyond, in the Central, Northern, and Western States; and that said unjust and unlawful increase imposes upon yellow-pine lumber thus carried in interstate commerce an excessive burden, out of line with and far more grievous than that sustained by other products of like weight and value, transported by defendant railroad companies; and that said increase will drive those complainants from the only market which is available to them and confine all of the output of their several mills in a territory which is already fully occupied by them and them alone, and thereby overstocks such territory which is their only market left under said increased rates, and cause and entail great financial loss upon all concerned, and especially upon complainants.

That there is invested by your orators and other members of the Central Yellow Pine Association approximately $50,000,000 in the production and manufacture of yellow-pine lumber. Their annual output is estimated at 1,000,000,000 feet, of the value, at the mills, of $10,000,000, not less than 75 per cent, or 750,000,000 feet, of the value of $7,500,000, is shipped to the territory above mentioned as interstate commerce, and is directly and injuriously affected by the said increase in rates. That an increase in rates of 2c. a hundred pounds equals from 60 to 90 cents a thousand feet, depending upon the quality of the lumber, and will amount to from $700,000 to $800,000, annually, in additional freights on the lumber shipped to the territory affected; and this will be further manifested, as 2 cents is the lowest increase of all the increases so made in said rates. That this suit involves for each of the complainants more than five thousand dollars exclusive of interest and costs.

Your orators aver that said increase in rates is unjust, unreasonable, and arbitrary, and contrary to the provisions of an act of Congress for regulating commerce between the States, commonly called the interstate-commerce act, approved February 4th, 1887, and the several acts amendatory thereof and supplemental thereto, in the foregoing and in these particulars:

1. Under the rates in force just prior to April 15, 1903, lumber was a very profitable commodity to the carrier, and the carrier, under said rates, derived and received all that he was entitled to receive,

and any greater charge would have amounted to and does amount to unreasonable, unjust, unlawful, and arbitrary rates. That lumber was, under said previous rate, if not the most, very nearly, the most profitable to defendant railroad companies of any freight originating in the southern territory, value, tonnage, and cost of handling considered. That value being small, and the tonnage being very great and the cost of handling being very small, and the lumber being practically indestructible, it could be transported, as a rule, in any kind of cars that the railroad companies might have empty.

That the average freight on yellow-pine lumber from complainants' mills to the points of destination aforesaid, amounts, in the aggregate to a sum fully or nearly equalling the value of the product at the point of shipment. From points in the State of Mississippi alone nearly or quite $10,000,000 is annually paid to these defendant carriers for transportation to market of yellow pine lumber valued at the mills at about the same sum, and this under the rate in force just prior to April 15, 1903, was a high rate, and far more than lumber, when properly classed, should have been charged. The product annually shipped to the territory directly affected by this unlawful and arbitrary increase in rates is at the mill of the value of about $7,500,000, and the cost of transportation to said points of delivery usually equals the value of the product at the mill.

The said previous rate on yellow-pine lumber was, without said increase, greater per ton per mile than on coal, pig iron, cement, and other like products, value, weight, and cost of handling considered, and the carrier made at such figure more than reasonable profit, and the rates on these commodities have not been increased; that the character of yellow-pine lumber shipped to the territory involved is largely of such grade as that for its transportation the carrier in great degree furnishes platform or coal cars, and which the shipper is required at his own expense to equip with standard strips and supports, which are required to be of high-grade lumber, and which involve a cost to the shipper per annum from Mississippi alone of from fifty to one hundred thousand dollars, ranging between $2.50 and $3 per car. In addition to this the shipper is required to pay freight on the increased weight caused by said equipment, amounting on an average of $2 per car, and your orators charge that no other commodity is subject to such rates under such conditions, and the same is unreasonable, unlawful, and arbitrary, and that the said increase of rates makes the profit of manufacturing amount to a very small margin.

2. That there is a large treeless area between the yellow-pine, cypress, and gum region of the South, the hemlock of the North and Northeast and the white-pine regions of the North and the native mountain trees and timber of the Pacific coast; that this area is the market in which the southern yellow pine, the great body of the product produced by complainants, must be sold, as the export facilities of the interior southern mills are practically nothing; that complainants in this suit are restricted and limited to this territory for the sale and disposition of the bulk of their product; that to enable them to dispose of the same they must come into active competition with and meet the prices of their competitors from the several surrounding regions in order to do business; that this is the one market available, and it is surrounded and bounded by other lumber-produc-

ing regions, and which regions are anxious and eager to take advantage of their opportunities, and the manufacturers of said regions are amply able to do so; that the competitors of said southern yellow-pine lumber in this region are:

First, the Pacific coast timber; second, the white pine of the North; third, the hemlock of the North and Northeast; fourth, the cypress, gum, and other lumbers of the South.

1. That there now stands on the Pacific slope, centered about Seattle, Tacoma, Washington, and Portland, Oregon, approximately six hundred billion feet of timber for lumber; that recently, and now, J. J. Hill and associates, in connection with the Northern Pacific and other railroad companies, have constructed the most enormous steam vessels for transportation to the Orient, through Yokohama and the cities of the Far East, for the export of cotton, iron, steel, and other products of the eastern and southern manufacturers of the United States, and of the grain located in the central portions, and which are now being exported through said ports in enormous quantities.

That the said ports are the ports of export to Alaska and to the cities thereof, and to the valley of the Yukon, with its rapidly increasing population. That persons dwelling in said country obtain their supplies and food stuffs through said ports, and a great number of freight cars move west to carry said goods, and there is comparatively a small amount of imports from said Alaskan territory and oriental countries. That, in addition thereto, Hawaii and the Philippine Islands are the destination of a large amount of supplies, arms, and ammunition, all of which are being sent through these ports to a large extent, and there are substantially no return cargoes to be transported in the cars eastwardly. That the railroads running to said territory from the West have tunneled the mountains and obtained a practical and easy haul for said Pacific coast lumber from said cities of Seattle, Portland, and Tacoma to the competing territory hereinbefore described; and said great numbers of cars that move westward loaded must return eastwardly as empties unless the same transport lumber, as there are few products for which the same could be used to any appreciable extent; and said present transcontinental roads are using their endeavors to substitute for and supplant the yellow-pine lumber in said competitive district with the Pacific coast products, and even under the rates in effect prior to April 15, 1903, they were making great headway.

The imports into Colorado and western Nebraska therefrom have increased in the last two years over 300 per cent, whereas southern yellow pine lumber imported into the same territory has not only not increased or held its own, but actually, in a large per cent of the cases, has decreased, notwithstanding the fact that some of the originating roads of yellow pine lumber have tracks thereto and therein. That owing to the large quantity of timber there standing, and the large sawmills situated about Puget Sound, the cost of manufacturing lumber there is comparatively very small. That orators are informed and believe that almost immediate effect will result from the fact that said Hill and associates, through said Northern Pacific Railroad Company and other railroad companies, have recently taken large contracts with the Government to transport an enormous amount of freight to these Pacific ports, and such transportation will necessitate

the movement of a vast number of loaded cars to the West, and that on arrival there there will be no return haul except of lumber, and there will necessarily be a very large amount of lumber brought back and into this competitive territory, there to be sold in competition with the southern yellow pine.

That it is all the yellow pine products of the South could do, under the conditions prior to April 15, 1903, to maintain and hold their competition against this Pacific coast manufacturing, and under the changed conditions and advanced freight rates the southern producers would be driven from the western portion of this territory by said Pacific coast product.

That, as orators are informed and believe, the defendant railroad companies pretend to believe that complaints' yellow pine industry is very prosperous, and that it is netting to its owners a large and very handsome profit, but such is not the case. This belief is without foundation in fact.

That prices of yellow-pine lumber have remained practically stationary during the last year, while the cost of production has greatly increased, so that now the profits do not equal those of a year ago, and are but a reasonable return to the manufacturers for the money invested in plant, labor, and other costs of production; and the defendant railroad companies, proceeding on the hypothesis, which has no existence in fact, have made said increase in rates for what they believed the traffic would bear, under this false assumption, without foundation in fact, and in so doing they have destroyed the profits of the industry in limiting and circumscribing the territory in which the same can be marketed, and placing a rate so unreasonable as to practically destroy the margin of profitable operation.

Second. That a part of said hemlock district is composed of Michigan and Wisconsin, and in 1901 the consumption from this district alone (and, on information which orators believe to be true, the same is substantially true of the Pennsylvania and western New York district) was 1,401,583,000 feet, and it was increased in 1902 by the enormous amount of 97,737,000 feet, and this while the consumption of yellow pine was practically stationary under a uniform price and under the freight rate then in force. That during said period a report was made from the Hemlock Association of Michigan and Wisconsin to this effect: "The outlook for hemlock is of the very best and the territory is getting broader every month;" and your orators know only too well that this is true.

That the service of said defendant railroads, now advancing the rate and attempting on false assumptions to take all profit from the complainants, is largely responsible for the alleged discrepancy between the alleged gross and net revenues of defendant railways; that the service rendered complainants is slow and precarious; that a prompt and efficient service is a most important factor in transporting products, and this insufficient service, so rendered, is making southern pine an ever-weakening competitor. That cars are not promptly delivered to complainants upon requisition, and sometimes weeks elapse before the much-needed cars are furnished and then they are carried to market at a very slow rate by reason of the congested condition of the railroads and the lax methods adopted by them.

That a reasonable time to get yellow-pine lumber to market from

complainants' mills ought not to exceed one week at a maximum, but sometimes, and frequently, cars take three, four, or five weeks, sometimes longer, to arrive at their destinations. That these dilatory proceedings are most destructive to complainants' business, and the fact is notorious that southern yellow pine is losing, on this very ground, as was recently, and prior to April 15, 1903, expressed by a prominent lumberman of Chicago, who is largely interested in hemlock and yellow pine, and is, also, a manufacturer of yellow pine in Mississippi, "Our customers throughout Illinois are paying more money for No. 1 hemlock flooring and shiplap than they are for better grades of yellow pine. Yellow pine would sell more freely and at better prices if we could give prompt delivery, but under the present conditions of car shortage customers will pay more money because they can get it with reasonable promptness;" and your orators know that this is true, not only as to that person's business, but as to the whole situation in this competitive district.

That last winter was one of the most favorable in years for moving the hemlock and white-pine logs to the mills, and for transportation, and that there is now much larger crops of logs in for this sawing season than ever before in the history of the business, and that the sellers of hemlock will at once proceed to greatly broaden their territory with this opportunity, if the advance rates continue in effect, and an opportunity is thus now presented to the hemlock manufacturers to utterly oust the yellow-pine lumber from this territory, a necessary and valuable market, and which was acquired with much labor, expense, and trouble.

The freight rates prior to April 15, 1903, were highly discriminative, arbitrary, and unlawful against yellow-pine lumber in said territory in favor of hemlock, the rate on hemlock being 11 to 14 cents, and that on pine being 24 cents and over, per 100 pounds; and if the advance continues in effect, 2 cents and upwards in addition thereto; that on the face of this discriminative and unlawful rate the preference over yellow-pine lumber is over $3.84 per 1,000 feet; but in addition to this unlawful discrimination it must further be noted that the pine is even more discriminated against, because the shipping weight of hemlock is only 2,000 pounds per 1,000, whereas the shipping weight of yellow pine is 2,600 pounds per 1,000 and over, and also because the stumpage value of hemlock is largely reduced by reason of the great value of the hemlock bark products.

Complainants on information and belief state that the president and vice-president of one of the largest transportation companies carrying yellow pine lumber admitted that they believe since they have studied the lumber situation that a serious mistake was made in agreeing to advance yellow pine lumber rates from the South, but that they felt that they were prompted to the advance, and while they would have to put the rates in effect, still that they would give the old rate back again. Complainants aver that the trans-Mississippi system of railroads have already done so; and though there was much prosperity in that region last year, there was no increase of market for yellow pine lumber.

That if the present advance continues effective it will bring down the frontier market line, as shown on annexed map, Exhibit A, and it must be noted that this reduction will exclude the trade centers of lumber—*Chicago, Indianapolis*, Toledo, Columbus, Omaha, Wheeling,

Akron, Terre Haute, Quincy, Keokuk, Des Moines, Cleveland, and practically Cincinnati—which territory in truth and in fact contains the maximum of inhabitants and consumes most of the product.

Third. While generally it is reputed now that the white pine of the Northern States is exhausted, this is, in fact, untrue; there are still standing vast forests thereof, containing approximately billions of feet, and when manufactured white pine lumber comes into active competition with yellow pine lumber.

That orators verily believe, from extensive research and experience on the subject of yellow pine and other grades of lumber, that this advance in freight rates will practically destroy the largest and most profitable section of the market for the same by surrendering it to the Pacific coast, the hemlock and the white pine manufacturers, wherever and whenever the same comes into competition with yellow pine, and yellow pine will have been rendered unable to compete with the same except in a limited territory, in which territory there will be at once an overproduction of yellow pine; that the whole output that is now shipped to the whole of the market will be confined to the narrow compass as shown on the map, and that within the course of a short while the market will be so congested as to render sales impossible at anything except a ruinous sacrifice.

And orators further charge that this rate is unjust, unlawful, and discriminative both in the amount of the rate itself against said yellow pine in favor of other woods, notably cypress and gum from the same territory in the Southern States and other lumber shipped from said section.

Your orators and other manufacturers of southern yellow-pine lumber have within recent years, by persistent effort and at great expense, created a market for the product within a large territory consisting of the States of Ohio, Illinois, Indiana, Wisconsin, and parts of New York, Pennsylvania, Michigan, and Iowa, and States to the farther west. Within this territory they come into direct and active competition with the hemlock, spruce, and white pine of Canada and of the Northern States and with the woods of the Pacific coast, as well as with cottonwood, cypress, gum, and other woods from the South, as hereinbefore more particularly set forth. They have been able to meet this competition at narrow margins of profit and with grades of lumber for which the market elsewhere is restricted. Having acquired a market for this grade of their products, they have increased their investment of capital and correspondingly enlarged their output. Said Exhibit A indicates the territory referred to, and rates to points within this territory were greater on yellow pine without this increase than on the other woods. The rate on Pacific coast fir is 4.1 to 5.3 mills per ton per mile, and on white pine from northern points the rate is 4.7 mills per ton per mile, while on yellow pine the rate was from 5.7 to 6.5 mills per ton per mile, and the said increase of the maximum 2 cents raises the same to 5.7 to 7.5 mills per ton per mile, from which it appears that yellow pine is now paying 13 to 40 per cent more than carriers of white pine demand for that product. White pine, cottonwood, and fir are of lighter weight than yellow pine, and thus the discrimination in their favor is greater than is apparent from these figures alone. No increase has been made on the rates of these competitive woods, and yellow pine has been by

said unlawful association, by an unlawful conspiracy, singled out and segregated, and had imposed on it this unjust, unlawful, unreasonable, and arbitrary rate, whereas the rates on the other woods remain the same.

Should the increased rate be continued as it now exists, the manufacturers of yellow pine will be unable to compete with the other woods in the territory designated, and will be compelled to retire therefrom. Thus the market for yellow pine, which has been acquired at great cost, will be destroyed, and the capital invested for the production of this yellow-pine lumber to meet the demand created, will be lost, and the large product already manufactured and now on hand will be largely reduced in value for want of a market; and your orators' business, already greatly damaged by reason of this unequal and unjust discrimination in its competition with other woods, by reason of said unlawful, unreasonable, and arbitrary increase, will be increasingly injured.

4. That cost of production of yellow-pine lumber has most materially increased recently, and was increasing up to the time said unlawful rate was put into effect, while the market value of the manufactured product had remained practically the same. That there has been practically no increase in the prices of yellow-pine lumber over those obtainable January first, 1902. The increased cost of production consists in the items of raw material, labor, and feed for stock, all of which have materially advanced in price and seriously affect the cost of manufacturing the product.

On information and belief your orators state that by reason of straightening curves, the greatly increased carrying capacity of cars and locomotives, and by other appliances, the great and increasing amount of traffic, the decreased number of employees, and the practically stationary cost of low grade of coal used by the railroad companies for fuel, the relative cost of transportation has materially decreased in recent years and is still decreasing. That the relative cost of freight traffic operation of defendant railroad companies is less now than in any former year.

That the defendant carriers have for a considerable period failed to furnish complainants cars sufficient for the transportation of lumber, thereby causing congestion at manufacturing points, and have by their lax methods delayed the loaded cars for such unreasonable times as that they have thus materially increased and by their careless management in this regard have forced their expense account for transportation to a higher figure than if they had been prompt and expeditious in transportation of their product and had used their rolling stock to a reasonable degree of efficiency, and that it is unjust and unreasonable to entail the cost of this want of efficient management upon complainants. But on the contrary your orators state that the profit of defendant companies even with these dilatory and insufficient methods have constantly increased, and that there is no reasonable ground for the said increased freight rates. Complainants further charge that the Illinois Central Railroad and Southern Railway companies are unreasonable in making this especially increased rate, because a large portion of their equipment, which ordinarily and usually ought to have been engaged in transportation of commodities for the public, and earning dividends, have been used in increased construction of roadbed, the cost of which can not

in law be charged upon the property account; and complainants can not be charged and taxed unjustly and unlawfully at one and the same time by said Illinois Central Railroad Company and Southern Railway Company to earn large dividends, amounting to about 10 per cent for the past year and about 11 per cent for the year to come, and also to furnish and construct for the benefit of the same railroad company vast and valuable improvements amounting to many millions of dollars. That the right of the public can not be thus violated, especially when, in addition to all this, said railroad company is paying interest on its bonded indebtedness which, as complainants are informed, represents an excess of value of the most of its railroad in the State of Mississippi. While the defendant companies pretend that the state of their business compels them to put on this increase, their net revenues have been rapidly and steadily increasing, and their additional cost of transportation has been offset by the increased capacity of cars and locomotives and by the use of the greatly improved and modern ways and appliances.

5. That the said rate is further arbitrary, unjust, and discriminatory in this, that the rates from Mississippi points to Ohio River points and beyond is from 2 to 5 cents per hundred higher than the rates from Arkansas and Louisiana west of the Mississippi River through disguised rebates; thus, from McComb City, Miss., on the Illinois Central Railroad, to Chicago the rate is 26 cents per hundred pounds, and the distance 810 miles, while from Stamps, Ark. (the lumber being carried partly over the Illinois Central Railroad), the through joint rate is nominally 26 cents, but, in fact, it does not exceed 21 cents per 100 pounds on account of said disguised rebate in the shape of a tap-line division of 5 cents per 100 pounds allowed to the shipper as his part of the joint freight rate for hauling the logs by his logging railroad to the mill, which rate complainants are informed and believe does not appear in the joint through rates filed with the Interstate Commerce Commission as published rates; and this alleged rebate is now before that honorable Commission being investigated by it on the charge of illegality. And this your orators charge is unjust, unreasonable, discriminatory, and unlawful.

6. The increased rate is further unjust and arbitrary and discriminatory and unreasonable in that it is made to apply from said southern points to said market under said unlawful conspiracy, concocted by said Southeast Mississippi Valley Association, on yellow pine lumber alone, segregated and separated, unreasonably and unlawfully, for this unlawful increase in rate from other woods and articles, although said defendants carry other woods. Your orators further state that within the past four years the rate on yellow pine lumber between the points in Mississippi and the points designated has already been increased 2 cents—in some cases, 3 cents—per 100 pounds, and they charge that if existing conditions of said railroad demand increased revenue, which they most emphatically deny, then that it is unlawful and unjust for said railroad companies to single out one specific commodity, and by an unlawful conspiracy to make that one thing stand the whole charge, and bear the whole of a large burden which is created by alleged changed conditions, and which, if necessary, complainants charge should be equitably distributed over all of the articles carried by said defendant and not imposed on one single article to the exclusion of others.

Complainants aver that conceding it to be true, which they deny, that increased revenue is required, then to produce this revenue the burden by the railroad company should be distributed over the whole range of articles transported by it, as the transportation of all of said articles is that which demands and derives the benefit from said carriage, and in this instance complainants state that said railroad companies have unlawfully, unreasonably, and unjustly segregated yellow-pine lumber from Mississippi points as the one commodity on which to impose this great burden, amounting to over a million dollars a year, and that such imposition, to the exclusion of the other commodities, is unjust, unlawful, and unreasonable, and especially do complainants state that this increased rate is unlawful, because they charge that the previous rate gave to the carrier reasonable and more than reasonable compensation for the duty performed and netted the carrier a sufficient profit and yielded all that under the law or in fact was entitled to be charged as a rate against yellow-pine lumber.

7. Complainants further charge that this increase in rate will now be especially unreasonable, unjust, and discriminatory in this, to wit: That by reason of the tap-line divisions herein set forth and the further fact that the trans-Mississippi carrier, running north and south and to the said basing points, have withdrawn this advance of 2 cents of April 15, 1903, and to the east of complainants the increased rate has not been put in effect, and the Honorable Emory Speer, U. S. district judge, has at the suit of complainants' competitors held that court would, upon application, after complaint to the Interstate Commerce Commission setting up that said increased rate was unreasonable, enjoin the enforcement of said rate until its reasonableness was ascertained by said Commission, and that, as complainants are informed and believe, such application to said Commission will be made and said injunction will then issue, and said court has taken jurisdiction thereof, with the right to have the injunction continued until the Interstate Commerce Commission shall decide the question of its reasonableness or unreasonableness, and in the interim complainants' competitors on the east side have enforced the old rate; that thereby on each side of complainants, both to the west and to the east, this increased rate, so attempted to be put in, has been put into effect or is withdrawn; that thereby the Georgia and Arkansas and Louisiana competitors of complainants are enabled to ship their lumber to the competitive market aforesaid without this extra charge, and complainants will be practically debarred therefrom because of their inability to successfully compete with their neighbors, who are enabled to undersell them in the largest market to which they can ship their lumber, and they will be thereby precluded therefrom and their business and property will be irreparably damaged.

8. That said complainants are absolutely dependent for transportation to market for their lumber on the several defendant railroad companies; that these several defendants have unlawfully conspired, as complainants are informed and believe, to raise the rate to the aforesaid competitive market to said unreasonable, unlawful, and arbitrary amount, and that in pursuance of said conspiracy, as complainants are informed and believe, have raised said rates to said unreasonable, arbitrary, discriminatory, and unlawful amount, and

that by said unlawful raise complainants are now suffering and will continue to suffer irreparable damage, contrary to the act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraint and monopolies."

For special reason for an immediate temporary restraining order your orators show that before receiving notice of the proposed increase in rates large contracts were entered into by some of them for the delivery of lumber to points within the territory affected by said increased rate; that your orators have been unable to fill these orders because of the fact that the defendant railroad companies have failed to provide sufficient cars to move the manufactured product, so that your orators have now and for some time have had on their skids a large quantity of lumber awaiting transportation to be delivered on the existing contracts, which would have been delivered had the defendant carriers furnished sufficient transportation.

VII. Your orators state, upon information and belief, that the Southeast Mississippi Valley Association is employed by the defendant railway companies and other carriers as an irresponsible medium through which to effect a lessening of competition, and in legal contemplation constitutes a combination and conspiracy in restraint of commerce between the States. Your orators are informed that while nominally any railway company, being a member of the association, may fix its own rates and promulgate its own tariffs, and is not bound by any written contract to change its rates so as to conform to the rates of other carriers, yet in point of fact there is an understanding generally acted upon under which these results are brought about. Thus, in the matter of said increased rates on lumber, the various lumber-carrying roads have acted in concert, and have acted through the said association, and have singled out this commodity as that upon which this extra burden should be made, notwithstanding that some, if not many, of the roads would derive an equal or greater benefit from the laying of increased rates upon other products. Your orators aver that although by the act of Congress entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, they are entitled to recover treble damages for the injury inflicted by reason of said conspiracy, their damages can not be readily or clearly shown, are incapable of actual ascertainment, are going on every day, and even could they have a remedy at law it would involve a multiplicity of vexatious suits by each of them, and they aver that the same is a continuing trespass; that there is conspiracy to interfere with interstate commerce; the remedy at law is wholly inadequate and incomplete, and that the damage which they are suffering and which will be done to their business is irreparable and not to be compensated for by any money damages; that their right is based on statutes of the United States directly, and the rights they assert arise thereunder, and that this honorable court has complete and full jurisdiction; that the only remedy is a writ of injunction; and the issues to be determined are as to the conspiracy and the said unreasonable rates, and the damaging effects as to all of your orators can be determined by one suit in equity, and forasmuch as your orators are remediless by the strict rule of the common law, and can obtain relief only in a court of equity, therefore, the premises considered, the complainants pray:

PRAYER.

1. That the court shall grant an order temporarily restraining each of defendant railroad companies from enforcing and collecting the said increased, unlawful, unreasonable, and arbitrary freight rate on yellow-pine lumber from points within to points without the State of Mississippi, to points on and beyond the Ohio River and east of the Mississippi River, such order to be effective until the further order of this court.

2. That said rate on yellow-pine lumber as increased on April 15, 1903, by said several said defendant companies, and as now in force, be decreed to be unreasonable, unlawful, arbitrary, and discriminatory, and to be violative of the statute of the United States.

3. That the court will make a rule on each and every of the defendants commanding them to appear before one of the judges of this court, at such time and place as your honor may designate, then and there to show cause why an injunction as prayed should not be granted, and after due proceedings that an injunction and writ of injunction issue enjoining the defendant railroad companies from enforcing the said unlawful, unjust, unreasonable, and discriminatory rate on yellow-pine lumber from points within the State of Mississippi to points without said State and to points on the Ohio River and beyond and east of the Mississippi River, and that on final hearing said injunction be made perpetual.

4. That if mistaken in the relief prayed for, such other further and general relief as the case stated may require and to your honor seems meet.

5. That a writ of subpœna be issued directed to the said Illinois Central Railroad Company, the Mobile and Ohio Railroad Company, Alabama and Great Southern Railroad Company, Southern Railway Company, the Gulf and Ship Island Railroad Company, and Southeast Mississippi Valley Association, and M. P. Washburn, chairman thereof, commanding each of them at a day certain, and under a certain penalty, personally to appear before this honorable court, and then and there full, true, and perfect answer make to all and singular the allegations of this bill, but not under oath, answer under oath being expressly waived, and to perform and abide such order and decree as may be made herein in the premises.

T. MARSHALL MILLER,
GREEN & GREEN,
Solicitors for Complainants.

STATE OF MISSISSIPPI, *County of Hinds:*

Personally appeared before me the undersigned officer, J. L. Enochs, who, being by me first duly sworn, on oath states that he is the treasurer of Fernwood Lumber Company, one of the complainants in the foregoing amended and supplemental bill, and that the matters therein stated as of knowledge, of affiant's own knowledge, are true; those stated on information, of affiant's own information, he verily believes to be true.

J. L. ENOCHS.

Sworn to and subscribed before me this second day of June, 1903.

[SEAL.] W. A. MONTGOMERY,
Notary Public.

ORDER.

Upon reading and considering the foregoing verified, amended, and supplemental bill it is ordered that the same be filed, and that each of the defendants be and appear before me at Kosciusko, Mississippi, on the fifteenth day of June, 1903, at ten o'clock, to show cause why a temporary injunction should not be granted as prayed.

It is further ordered that a copy of this order shall be served on each of said defendant railroad companies at least five days before the said hearing of said application for said temporary injunction.

Dated and signed this the 4th day of June, 1903.

H. C. NILES, *United States Judge.*

In the circuit court of the United States for the southern district of Mississippi, ——— term, A. D. 1903.

C. W. ROBINSON LUMBER COMPANY ET ALS., COMPLAINANTS, *vs.* ILLINOIS CENTRAL RAILROAD COMPANY ET ALS., DEFENDANTS.	In equity.

The joint and several response of the Illinois Central Railroad Company, a corporation and citizen of the State of Illinois; the New Orleans and Northeastern Railroad Company, a corporation and citizen of the State of Louisiana; the Mobile and Ohio Railroad Company, a corporation and citizen of the State of Mississippi; the Southern Railway Company, a corporation and citizen both of the State of Virginia and the State of Mississippi; the Alabama Great Southern Railroad Company, a corporation and citizen of the State of Alabama, and the Gulf and Ship Island Railroad Company, a corporation and citizen of the State of Mississippi, to the rule to show cause why an injunction should not issue as prayed in the bill filed in the circuit court of the United States for the southern district of Mississippi, in equity, by C. W. Robinson Lumber Company et als., against these respondents and others.

These respondents, respectively, not waiving their demurrer, but relying upon the same, and now and at all times hereafter saving to themselves all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for further response to said rule, severally responding, say:

It is admitted that the character and citizenship of the several complainants are correctly alleged. It is admitted that all of complainants are members of the Central Yellow Pine Association. The character and organization of said association is not known to defendants, and the right is reserved, if it shall become material, to inquire into and put before the court the real character of said organization and whether or not it is organized and carried on for illegal purposes and contrary to the statutes of the United States prohibiting associations, agreements, combinations, and conspira-

cies for the purposes of monopoly or the restraint of interstate commerce.

Respondents aver that a suit similar to this suit has been recently brought in the fifth circuit of the United States for the southern district of Georgia in the circuit court of the United States by certain complainants who are manufacturers of yellow pine lumber in the States of Georgia, Florida, South Carolina, and Alabama, and who are members of an association similar to that to which complainants herein belong and which is known as the "Georgia Sawmill Association," and that said suit is brought for the same purposes sought to be secured by the present bill, and that the two bills, with the necessary changes as to parties and local conditions, are identical.

Respondents further aver that they are informed and believe that these two suits have been brought by the cooperation and agreement of the complainants in the Georgia suit and the complainants in this suit and in cooperation with the respective yellow pine lumber associations to which they belong, and among other purposes for the purpose of simultaneous cooperation and action and to affect, by securing injunctions, the rates upon lumber from territory west of the Mississippi River into their competitive territory, believing that if they can hold in force temporary injunctions in said suits for a short period the railroad companies who are carriers of yellow pine lumber from points west of the Mississippi River to competitive territory of these respondents will be compelled to reduce their rates to meet the rates held in force by said injunctions, and that thereby defendants, regardless of such injunctions, will be compelled to reduce their rates to put their shippers upon a parity with the shippers from the territory west of the Mississippi River.

Defendants further aver that they have received definite information in regard to the constitution, character, and conduct of the said Georgia Saw-Mill Association, and that they are informed, and believe, that said association and the members thereof have combined and conspired to and with each other to monopolize a part of the trade or commerce in yellow-pine lumber among the several States of America; that they are attempting to monopolize, and do in fact monopolize, a part of said trade or commerce; and that they are operating under a contract and combination in the form of a trust, or otherwise, in restraint of trade or commerce in yellow-pine lumber among the several States of the United States; that said contract or combination in the form of a trust or otherwise, or conspiracy, is evidenced in part by a paper known as the "Constitution and by-laws of the Georgia Saw-Mill Association, composed of yellow-pine manufacturers and planing mill owners in Georgia, Alabama, Florida, and South Carolina," adopted at a meeting held at Cordele, Georgia, August 3, 1899. A correct copy of this paper, if it can be obtained, will be produced at the hearing, and it is prayed that, if same can be obtained, it be made a part hereof as fully as though set forth herein. Said constitution and by-laws provide that "the price on all lumber and other building material handled by sawmills belonging to the association are to be fixed by the association as heretofore, and the price list made up and information sent out by the secretary as in the past."

Defendants further aver that said Central Yellow Pine Association is, as to complainants, a Mississippi association, and that it is

an unlawful, illegal association and a trust and combine in contravention of section one, Article G of chapter 28 of the Statutes of 1900 of the State of Mississippi, and that this bill is brought in furtherance of the objects of said association, and that, being an unlawful trust and combination, they are entitled to no relief.

It is admitted that the character and citizenship of the several defendants are correctly set out, with the exception that it is denied that the Southeastern Mississippi Valley Association is in any sense a partnership.

I. It is denied that all manufacturers of yellow pine lumber in the States of Mississippi, Louisiana east of the Mississippi River, and Alabama constitute the membership of the Central Yellow Pine Association.

Defendants are informed, believe, and say that there are within the said territory more than 175 manufacturers of yellow pine lumber who are not members of said association; that on the line of the Illinois Central Railroad Company and the line of the Gulf and Ship Island Railroad Company there are more than 130 manufacturers of yellow pine lumber who are not members of said association; that only 14 of the complainants are situated upon the lines of the said two companies; that those manufacturers situated on the lines of said two companies ship the bulk of yellow pine lumber that is transported in interstate commerce by the Illinois Central Railroad Company; that the total daily capacity of the manufacturers of yellow pine lumber situated upon said two lines is 7,577,000 feet, and that the total capacity of those manufacturers situated upon said two lines who are members of said association is 1,650,000 feet daily, and that complainants represent but a small proportion of the yellow pine lumber which is shipped over the lines of defendants as compared with the total amount so shipped.

Defendants state upon information and belief that complainants were about the latter part of March or the first of April, 1903, members of an association known as the Southern Lumber Manufacturers' Association, the headquarters of which association are at St. Louis, Mo.; that said association represented substantially all the manufacturers of yellow pine lumber in the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Missouri, and Texas; that complainants, about the time named, endeavored to get said association to take steps either before the Interstate Commerce Commission or before the courts or both, for the purpose of preventing these defendants and other railroad companies from putting into effect the proposed increase of two cents per hundred pounds on yellow pine lumber which is complained of in this bill, and that said association, through its proper authorities, refused to take such action, and that shortly thereafter the exact date not being known to defendants, complainants and others formed the Central Yellow Pine Association and largely for the purpose of instituting this and similar suits.

Defendants deny that said association was organized and that it is maintained for promoting and prosecuting by proper and lawful means the interest of the yellow pine lumber industry in the States named.

II. It is admitted that the several defendants are common carriers

and that they are engaged in the transportation of lumber from points within to points without the State of Mississippi, except the Gulf and Ship Island Railroad Company, whose road is entirely within the State of Mississippi.

It is admitted that each of the defendants maintains and operates a line or lines of railway within the State of Mississippi and that each of said defendants, with the exception of the Gulf and Ship Island Railroad Company, transports articles of commerce between the States. It is admitted that the Gulf and Ship Island Railroad Company issues through bills of lading upon which lumber is transported over the road of said company and its connections from points within the State of Mississippi to points in other States.

It is admitted that all of the defendants except the Gulf and Ship Island Railroad Company are members of the Southeastern Mississippi Valley Association. It is denied that the Gulf and Ship Island Railroad Company is a member of that association.

Respondents deny that said Southeastern Mississippi Valley Association was organized, or is maintained, under agreements or for purposes which constitute an illegal combination in restraint of interstate trade, or for the fostering of monopoly in destruction of fair competition among carriers engaged in interstate trade. Respondents aver that said association was organized and is maintained under "Articles of association of the Southeastern Mississippi Valley Association (printed and distributed August 14, 1902)," and a true copy of said articles is here filed, marked "Exhibit No. 2," and prayed to be taken as part hereof, as fully as though set forth herein, but it need not be copied unless called for. Respondents are advised and insist that said articles of association contain no agreement and indicate no purpose which constitutes an illegal combination in restraint of interstate trade, or for the fostering of monopolies in destruction of fair competition among carriers engaged in interstate trade. Respondents are advised and insist that the agreements contained in said articles of association and the purposes indicated thereby are in all respects legal, and that they do not violate any of the provisions of said act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraint and monopoly," or any of the provisions of the act of Congress of February 4, 1887, or of its amendments, entitled "An act to regulate commerce;" or any of the provisions of any other act of Congress, or of the common law.

Respondents are advised and insist that this court has no jurisdiction to decree that said Southeastern Mississippi Valley Association is an illegal organization and to order its dissolution, except under a bill filed by the district attorney of the United States under the direction of the Attorney-General. Respondents aver that the bill in this case is not filed by the district attorney of the United States nor under the direction of the Attorney-General. Respondents are further advised and insist that this court has no jurisdiction to decree that said Southeastern Mississippi Valley Association is an illegal organization and to order its dissolution without having all the members of said association before the court.

The bill shows on its face that other railroad companies besides defendants are members of said association. The Alabama and

Vicksburg Railway Company; the Cincinnati, New Orleans and Texas Pacific Railway Company; the Kansas City, Memphis and Birmingham Railroad Company; the Louisville and Nashville Railroad Company, and the Nashville, Chattanooga and St. Louis Railway Company are members of said Southeastern Mississippi Valley Association and none of them are parties to this suit. Respondents rely upon said defenses of want of jurisdiction as fully as though they were specially pleaded.

III. It is admitted that each defendant has given notice of and put in force April 15, 1903, a revised tariff of freight rates on yellow-pine lumber from points of shipment in the States of Mississippi and Louisiana to points on and north of the Ohio and east of the Mississippi River and west of Buffalo and Pittsburg, whereby the previously existing rate on yellow-pine lumber from and to the points designated has been increased 2 cents a hundred pounds.

It is denied that in promulgating said tariff of increased rates the several defendant railway companies acted in concert with each other and with other lumber-carrying roads that are members of the Southeastern Mississippi Valley Association in pursuance of unlawful agreement between said railway companies in restraint of competition and interstate rates. It is admitted that each defendant has made such advance of rates, but it is averred that in doing this each defendant exercised its own untrammeled judgment. It is denied that the same has been done through any concerted action between defendants or between them and any other railroad companies in pursuance of any unlawful agreement whatever in restraint of competition and interstate trade.

Defendants gave notice to each other and to other railroad companies and to the shipping public generally interested in such shipments that they would, upon the date named, put such increased rates into effect, but they entered into no agreement or compact of any kind with each other, or any other railroad companies, binding or obligating themselves in any way under any contract or under any penalty or forfeiture, or in any other way whatsoever to put in or maintain such rates, and were severally at all times legally and morally free to put in those rates or any other rates or to desist from putting in those rates if, in their several judgments, their several interests made it advisable.

Defendants have, from time to time and whenever their interests seemed to make it desirable, conferred with each other and with other railroad companies upon all questions bearing upon the cost and movement of freight and the development of trade and commerce, and have exchanged with those engaged in a similar business views and opinions bearing generally upon railroad interests, and have acted in such matters and in this particular matter independently and upon their own judgment and have in no wise been controlled by any agreement with each other or with any other railroad company, and defendants claim that they have the right and can not be debarred from the right of free and full conferences in respect of any matters relating to their business interests.

IV. Respondents deny that complainants' rights and interests, in common with those engaged in the lumber trade of this State, will be vitally and injuriously affected by the said increase of rates. On

the contrary, respondents aver that complainants and all other persons engaged in the lumber trade in the State of Mississippi will add the amount of the proposed increase of rates to the prices which they will charge purchasers for the lumber, and therefore the rights and interests of complainants and others engaged in the lumber trade in Mississippi will not be injuriously affected at all.

It is denied that such increase is unjust, unreasonable, and arbitrary, and that it will prove destructive to the business of complainants, and defeat competition within a large territory comprised of Ohio River points and points in the Central, Northern, and Western States.

It is denied that such increase imposes upon the yellow-pine industry a burden out of line with and far more grievous than that sustained by the products of other industries of like weight and value.

Defendants suppose that complainants and other members of the Central Yellow Pine Association have large investments in their business, but do not admit that it approximates fifty millions of dollars, and if this allegation be material, demands proof of same.

They neither admit nor deny the amount of annual output which is estimated by complainants at one thousand million feet of the value of ten millions of dollars.

Defendants are not advised as to whether or not the allegation that seventy-five per cent, or seven hundred and fifty million feet of the value of seven million five hundred thousand dollars, is shipped to the territory above mentioned is true or not, and if the same be material, they demand strict proof of same.

Defendants deny that the investment of complainants will be directly and injuriously affected by the increase of the rate. As to what the increase of two cents per hundred pounds would amount to per thousand feet will depend upon quantity, quality, and condition of the lumber shipped, and defendants have no means of anticipating either of these facts.

The allegation regarding the amount of such increase may or may not be true. Defendants have no information in regard to it which would enable them now to answer. The amount will depend on the quantity, quality, and condition of lumber. If the allegation be material, defendants demand strict proof of same.

V. 1. Defendants deny that the said increase in rates is unjust, unreasonable, and arbitrary. It is admitted that the previously existing rate on lumber yielded a profit to the carrier, but it is denied that it was under the previous or that it is under the present rates a very profitable freight and that it was or is the most profitable of any freight originating in the southern territory, value, tonnage, and cost of handling considered. So far as defendants are advised, the average freight in the aggregate on yellow-pine lumber from the mills to the point of destination does not amount to a sum fully or nearly equalling the value of the product at the point of shipment, but if such were the case it would be immaterial and inconclusive as to any of the issues raised in this suit. There are many other articles shipped in carload quantities the average freight on which, from points of production to points of destination, amount to as much or more than the value of the product at point of shipment—such as coal, lime, sand, stone, and many others.

Defendants have no knowledge upon which they can admit that from points in Mississippi alone nearly ten million dollars annually is paid to carriers for transportation to market on lumber valued at the mills at about the same, and if such allegation be material, strict proof of same is demanded. The same is true in regard to the allegation that the product shipped annually to the territory in question is three-fourths of the said ten million dollars and that the cost of transportation to the points of delivery on and beyond the Ohio River in some instances exceeds and usually nearly equals the value of the product, and therefore strict proof of these allegations is demanded. It is denied that the rate on lumber without said advance was greater per ton per mile than on coal, pig iron, cement, and other like products, value, weight, and cost of handling considered, and defendants deny that the present rate on lumber is greater per ton per mile than on coal, pig iron, cement, and other like products, value, weight, and cost of handling considered.

The comparison made in the bill between the rates on lumber and those on coal and pig iron is unfair, irrelevant, and misleading. Coal and pig iron are practically indestructible in transportation. The wreck of a car loaded with either of them would not occasion much if any loss of commodity, while lumber is broken to pieces if wrecked and is inflammable. Besides, lumber is a commodity that does not come into competition with coal, pig iron, or other like products. Coal is a very cheap commodity and it is not shipped at all from southern territory to the north-central and western territory. Pig iron is a crude commodity carried to manufacturing points, and it always gives to the carrier a second haul on the manufactured product.

Respondents say that a large quantity of the lumber shipped to the Ohio River points and beyond consists of car sills, which is of medium grade, and while there is a large amount of low-grade lumber, they do not admit that it constitutes the greatest quantity of that shipped. As to the said low-grade lumber, respondents say that prior to market being afforded for this lumber north of the Ohio River, the same was practically valueless to the sawmill men, and that what profit they make from said low-grade lumber is practically all net gain and is due to the fact that defendants and other railroad companies have afforded them a market where they can sell it.

The principal elements in the extra cost of handling lumber, particularly from Louisiana and Mississippi, are as follows:

By reason of the extremely low minimum permitted on lumber shipments, it enables retailers to order small shipments and get the benefit of carload rates. The total revenue tons an engine is capable of hauling depends entirely on the gross tons loaded into such car. An engine will haul 40 per cent more revenue tons in 50 tons capacity cars loaded to the maximum than in the 20-ton cars to their maximum, the latter being about the average tonnage of lumber.

The friction of wheel to rail and bearings and on journal and the length of train are the ruling factors of resistance, and therefore the more cars that are required to haul a light tonnage the less will be the total gross tons that the engine can haul. In other words, there can be hauled about 35 per cent more revenue tons of coal, grain, pig iron, billets, cement, and other heavy commodities with the same power and fuel expense than there can be hauled of lumber, and this is on account of the light loading of the lighter commodity. The

shorter the train or the more tons per car with which freight is loaded, the greater is the amount of revenue freight an engine and train can handle. A train containing one thousand tons of pig iron, coal, or cement yields a much greater per cent of revenue freight to dead weight than a train containing the same amount of lumber. For example, the dead weight carried in transporting one thousand tons of coal amounts to only three hundred and ninety tons, while the dead weight carried in a train handling one thousand tons of lumber is six hundred tons. If a train consists of one thousand gross tons, there will be seven hundred and twenty tons of coal to two hundred and eighty tons of dead weight, while in a train of one thousand gross tons loaded with lumber there will be six hundred and twenty-five tons of lumber to three hundred and seventy-five tons of dead weight. An actual check of cars loaded with lumber coming from the territory in question from connections with the Illinois Central Railroad Company and also upon said company's own line shows the following:

Number of cars.	Stenciled capacity.	Maximum allowance.	Weight of contents.	Per cent of capacity used.
5	80,000	165,000	163,900	99.30
229	40,000	10,120,000	7,867,062	77.70
39	50,000	2,145,000	1,489,100	69.40
481	60,000	31,128,000	17,540,832	56.30
32	80,000	2,816,000	1,424,500	50.50
786	.....	46,374,000	28,485,394	61.40

Thus it appears that the smaller the capacity of a car used in handling lumber the nearer is there an approach to loading to full capacity, and that as the capacity of the cars increases the proportion used diminishes. In the cars of 80,000 pounds capacity only fifty per cent is utilized in loading lumber as far as weight is concerned, although doubtless more than fifty per cent of their space capacity is utilized. This is not the case with corn, wheat, coal, and other commodities. These facts are alike applicable to the other defendants. Therefore it costs more to defendants to transport lumber than it does any of these other commodities, and the rate per ton per mile on these other commodities can not be looked to for establishing any discrimination against lumber.

Respondents admit that for the transportation of the greater portion of the lumber shipped by the complainants and other members of the Central Yellow Pine Association to the territory north of the Ohio River the carriers furnish a naked platform or flat car, but it is done, as a general rule, at the request of the lumber shippers. As a general rule shippers prefer to load lumber upon flat cars rather than in box cars. It is easier to load all kinds of lumber on flat cars than in box cars, and it costs the lumber shipper less to load and unload flat cars than it does to load and unload box cars. Certain kinds of lumber are too long to be loaded in box cars, and some kinds of lumber are so long as to require two flat cars for their transportation. Respondents' information and belief is that the cost of loading lumber in box cars is nearly twice as much as the cost of loading it on flat cars. In order to supply complainants and other members

of the Central Yellow Pine Association with the necessary number of flat cars to move their lumber respondents are compelled to haul a large number of flat cars to the mills empty, and consequently the rates charged by respondents for the transportation of the lumber from the mills to the territory in question represent a transportation service rendered in carrying the empty flat cars to the mills as well as a transportation service rendered in carrying the loaded cars from the mills to the said territory.

In the case of respondent, the Southern Railway, 85.3 per cent of its flat-car equipment, furnished for lumber shipments, move south empty. In the case of the other respondents about the same per cent of their flat-car equipment furnished for lumber shipments move south empty, but owing to the shortness of the time had for preparing this response the exact percentages have not been ascertained. A large number of such cars furnished to shippers are from foreign lines, and for these carriers must pay a per diem of twenty cents per day, which adds materially to the cost of carriage.

Respondents admit that the shipper is required to equip with standards, strips, and supports platform or flat cars upon which lumber is loaded for transportation. The object of the requirement is to prevent the lumber from falling off the cars while they are in motion. Similar requirements are made of others who ship articles which require similar precaution. Said requirement is universally enforced on railroads in the United States, and it is in fact a rule of the Master Car Builders' Association of the United States.

Respondents deny that they require shippers to make the standards, strips, and supports "of high grade lumber." The only requirement on the subject is contained in the following rules of the Master Car Builders' Association, viz:

"12. All stakes, clamping pieces, bearing pieces, and braces must be sound, straight-grained lumber (hardwood preferred), free from knots that would materially impair their strength. Care must be taken to keep the stakes from spreading at the top while cars are being loaded, and in no case must a load exceed the width of a car. Stakes should not be less than four inches wide by five inches deep, tapered at the ends to accurately fit into stake pockets, which should not be less than 3½ by 5 inches.

"13. Opposite stakes must always be fastened together. When the specified fastening is by means of boards there must be two boards for every pair of stakes, each board not less than 1 by 6 inches in section, and fastened to each end by not less than three ten-penny nails. When the specified fastening is by means of wire the wire must be equal to six strands, or three wrappings of No. 8 telegraph wire, and the wire must be secured to prevent it from slipping."

Respondents do not know the exact cost to the shipper of equipping flat cars with standards, strips, and supports, but their information and belief is that $1.25 per car is the average cost, and that the maximum cost for a single car would not exceed $1.50, and these estimates include all cost of labor and material in preparing said car for such shipments.

Respondents deny that the cost of equipping platform or flat cars for the shipment of lumber from Mississippi points alone aggregates anything like from $50,000 to $100,000 per annum. Respondents have above given their best information and belief as to the average

and maximum cost of equipping cars of lumber for transportation and the aggregate amount of such cost will depend upon the number of cars shipped.

Respondents admit that shipper is required to pay freight on increased weight caused by said equipment, but their information and belief is, and they so aver, that said freight on said equipment will not amount to more than $1 to $1.25 per car.

As an offset to the requirement that shippers must equip platform or flat cars with standards, strips, and supports and pay freight upon their weight, respondents aver that it is a common practice for shippers of lumber to load the cars below their marked capacity, the result of which is to deprive the carriers of the additional revenue which they would have obtained had the cars been loaded to their full capacity.

Respondents deny the averment in the bill that no other commodity is subjected to such rates and burdens, and respondents deny that either the rates or burdens imposed upon the lumber traffic are unfair and unjust.

There are similar requirements for making secure carloads of structural material, plates, rails, girders, cast-iron pipe, tan bark, etc., when loaded on open cars, and shippers are required to furnish and pay freight on standards, strips, and supports to protect the loads. Shippers of live stock are required to bed cars at their own expense, and when partitions are necessary for the separation of the stock, shippers are required to provide such partitions at their own expense. When it is necessary to protect and secure by proper bracing shipments of machinery, agricultural implements, vehicles, and other articles, the expense of providing such protection is borne by the shippers, and freight charges on practically all classes of traffic which require protection by crating or other packing are assessed upon the basis of gross weight.

The so-called "burden" of equipping platform or flat cars so as to protect the lumber is really not a burden at all. It is a natural and necessary incident of carrying lumber on flat cars, most of which have to be hauled to the mills empty. Formerly the carriers charged three cents per hundred pounds additional for lumber carried on flat cars, in partial recognition of the additional disadvantage to which the carrier is subjected in being compelled to haul the flat cars to the mills empty, and in being compelled, in the case of long lumber, to furnish two or more flat cars, one of which is known as an "idler."

Defendants would prefer furnishing box cars for hauling lumber, but complainants, on account of the increased cost to them of loading box cars, demand that they be furnished with naked platform or flat cars, and therefore these cars are furnished, not as a matter of choice by defendant, but to accommodate complainants. Box cars could be furnished in the natural course of business and at less cost to defendant. They are hauled south loaded and are in the territory and ready to perform this service, and would be tendered for this service if they were acceptable to complainants. Flat cars are hauled empty from St. Louis and Chicago and Iowa points to the South to afford complainants and like shippers the desired equipment, and also for loading their heavy timbers and sills, which can not be put in box cars. To meet this demand, coal cars and flat cars are frequently sent south empty from northern points, and thus an

additional haul without any compensation is incurred to afford complainants and like shippers such cars as they desire.

2. Respondents admit that there has been created a market for southern yellow-pine lumber in the territory consisting of the States of Ohio, Illinois, Indiana, Wisconsin, and parts of New York, Pennsylvania, Michigan, and Iowa; but respondents aver that the development of said market has required a great many years; and that complainants and other manufacturers of southern yellow-pine lumber have done no more to create said market than have respondents and other carriers, who have been at as great expense in the development of said market as have the lumber manufacturers. Respondents and other carriers have in the past been compelled to reduce their rates to said territory from Mississippi, in order to enable the lumber manufacturers in that State to meet the competition of other lumber in the territory north of the Ohio River. Respondents and other carriers have been compelled, at special expense, to provide equipment suitable to handle the lumber business; and they have, by active and expensive solicitation, secured a large amount of the business now enjoyed by the complainants and other manufacturers of southern yellow-pine lumber. Respondents and other carriers are as much interested in the perpetuation and extension of said market as are complainants or other lumber manufacturers.

Respondents admit that within the territory consisting of the States of Ohio, Illinois, Indiana, Wisconsin, and parts of New York, Pennsylvania, Michigan, and Iowa, complainants and other manufacturers of southern yellow-pine lumber come into direct competition (though to a limited extent only) with the hemlock, spruce, and white pine of Canada and the Northern States, and with the woods of the Pacific coast; but respondents are informed, believe, and so aver, that the southern yellow pine has largely superseded said other woods for use for the same purpose in said territory.

Southern yellow-pine lumber successfully competes in said territory with the Canadian woods, the white pine of the Northern States, and the fir lumber from the Pacific coast. It has been found that only in structural work, where extra size timbers are required, is the fir timber used to any extent whatever in the territory east of the Mississippi River. Yellow pine is without serious competition for many important uses, such as car construction, bridge and other structural work, such as docks, elevators, etc.

Respondents deny that complainants and other manufacturers of yellow-pine lumber have been able to meet the competition of hemlock, spruce, and white-pine lumber only with low grades of lumber. On the contrary, respondents aver that the rates from Mississippi and other Southern States on yellow-pine lumber have for many years been so adjusted as to enable the manufacturers of that lumber in the Southern States to compete freely with the woods of all other sections in the territory consisting of the States of Ohio, Illinois, Indiana, Wisconsin, and parts of New York, Pennsylvania, Michigan, and Iowa. And the ability of said manufacturers to compete with said woods from other sections in said territory is increasing on account of the diminishing supply of woods from said other sections. In addition to complainants' ability to compete on all the regular grades of lumber from said other sections, they have, within the past few years, on account of the phenomenal development and

demand in the lumber business, been able to market in said territory certain very low grades of lumber which heretofore they have had to burn or discard as worthless; and it is only with respect to those very low grades of lumber, which constitute an entirely new or additional business, produced at but little additional cost, that complainants have any difficulty in competing with lumber from said other sections in the territory described. The result of this suit, if complainants prevail, will be to prevent respondents and other railroads in the South from sharing to any extent whatever in the phenomenal prosperity of the business in the regular grades of lumber, which have all the time been disposed of in said territory without difficulty, and to have the reasonableness and propriety of the rates of respondents and other southern lines determined absolutely and wholly by what complainants and other southern manufacturers regard as necessary to enable them to make a handsome profit, not only on the high grades of lumber, but also on the very low grades, which constitute a new or additional business, in a by-product which has heretofore been practically worthless.

Respondents deny that the rate on Pacific coast fir is from 4.1 mills to 5.3 mills per ton per mile. They deny that the rate on white pine from northern points is 4.7 mills per ton per mile. That may be the rate prevailing from one district to Chicago, but it does not represent fairly the rates prevailing from northern points to the territory in question. It is the lowest rate. These rates run from northern points to the territory in question from 4.7 to 10.4, and the average is 6.6 mills per ton per mile.

Respondents do not understand what is meant by the allegation as follows:

"From which it appears that yellow pine is now paying from 13 to 40 per cent more than the carriers of white pine demand for that product."

The average rate per ton per mile on yellow pine from southern points to the territory in question is 6.2, while the average rate on white pine from northern points to the territory in question is 6.6 mills per ton per mile. Defendants have nothing to do with fixing the rates on white pine and fir which come in competition from northern points with complainants. It is denied that the increased rate on yellow pine will make the manufacturers of such pine unable to compete with other woods in the market of the territory designated and that they will be compelled to retire therefrom. Defendants have just as much interest in protecting the trade in yellow pine as the complainants have.

Respondents have no knowledge, information, or belief as to whether complainants and other manufacturers of southern yellow-pine lumber have increased their investment of capital or have correspondingly enlarged their output by reason of their having acquired a market for their low grades of lumber in the territory on and north of the Ohio River.

Respondents deny that to points within the territory on or north of the Ohio River, which are stated in the bill to be indicated by Exhibit B, the rates on yellow pine are now greater than on other woods for equal distances. Respondents deny that the rates on said other woods to points within said territory are correctly stated in the bill. The rates on fir lumber from Pacific coast points to Chicago,

St. Paul, Omaha, Kansas City, St. Louis, Cleveland, Pittsburg, Cincinnati, and Evansville, and the distances from said points of shipment to said points of destination, and the rates per ton per mile realized from said shipments, are correctly shown as Exhibit No. 3 to this answer; which exhibit is here filed, and prayed to be taken as part hereof, as fully as though set forth herein, though it need not be copied unless called for.

The rates on white pine from northern points to the territory on and north of the Ohio River are correctly represented by the rates on white pine from points in Michigan to Cincinnati, O., Louisville, Ky., Evansville, Ind., Cairo, Ill., Columbus, O., Cleveland, O., Indianapolis, Ind., Terre Haute, Ind., Pittsburgh, Pa., and Chicago, Ill. And those rates, and the distances, and the rates per ton per mile are correctly set forth in Exhibit No. 4 to this answer; which is hereby filed, and prayed to be taken as part hereof, as fully as though set forth herein, though it need not be copied unless called for.

The rates on yellow-pine lumber from points in Mississippi to points north of the Ohio River, while they are quoted as through rates, are in fact combination rates, which are made by adding the rates of the southern lines from points in Mississippi to the Ohio River to the rates charged by the northern lines from the Ohio River to points of destination north of that river. The southern lines have no voice whatever in fixing the rates which the northern lines charge from the Ohio River northward. The rates per ton per mile received by the southern lines are very much less than the rates per ton per mile received by the northern lines, notwithstanding the fact that the density of population and the density of traffic are very much greater in the territory north of the Ohio River than they are in the territory south of that river.

Respondents file herewith as Exhibit No. 5 to this answer a statement showing correctly the rates on yellow-pine lumber, carloads, from Cincinnati, O.; Louisville, Ky.; Evansville, Ind.; and Cairo, Ill., to Chicago, Ill.; Detroit, Mich.; Cleveland, O.; Indianapolis, Ind., and Pittsburg, Pa. Said statement shows not only the aggregate rates but also the distances and the rates per ton per mile received by the northern roads for transportation north of the Ohio River between the points named. Said exhibit is prayed to be taken as part hereof, as fully as though set forth herein, though it need not be copied unless called for.

Respondents aver and insist that the rates per ton per mile are immaterial and irrelevant, the only material and relevant question being as to the reasonableness of the aggregate rates, but respondents have submitted in said Exhibits 3 and 4 and 5 the rates per ton per mile merely in response to the allegations in regard to them contained in the bill.

Respondents deny that yellow-pine lumber is now paying any more than the carriers of white pine demand for the carriage of that product for equal distances.

Respondents admit that white pine and fir are somewhat lighter than the same dimensions of yellow-pine lumber, but respondents deny that there is any discrimination at all in favor of either white pine or fir as against yellow pine.

Respondents deny that they have singled out yellow pine as the *sole* object of the proposed increase in lumber rates.

Respondents have no knowledge, information, or belief as to whether the lines which carry white pine, fir, and other woods from the Pacific coast and from the Northern States to the territory on and north of the Ohio River propose to increase their rates on said woods or not. Respondents insist, however, that the question is not material, because respondents have not found that the competition with said white pine, fir, and other woods is now or has been heretofore sufficient to require the low rates which have been made on yellow pine from Mississippi to the territory on and north of the Ohio River.

Respondents deny the averment in the bill that should the increased rate from Mississippi be continued the manufacturers of yellow pine will be unable to compete with other woods, or will be compelled to retire from the territory on and north of the Ohio River. On the contrary, respondents aver that the manufacturers of yellow-pine lumber in Mississippi will be able to continue to compete with any other wood in the market of said territory.

Respondents deny that the market for low grade Mississippi yellow pine will be destroyed or even injured; they deny that the capital invested for the production of lumber by complainants to meet the demand created will be lost or in any wise impaired, or that any part of the product already manufactured and on hand, if any, will be worthless for want of a market.

Respondents admit that the cost of the production of yellow-pine lumber has materially increased since 1896–97; but it has not increased, either relatively or absolutely, as much as the cost of maintaining and operating railroads has increased. The cost of lumber used by railroads is now at least fifty per cent more than in 1897. Complainants adroitly aver that there has been no increase in the market value of yellow-pine lumber since January 1, 1902; but they carefully omit to aver, as the fact is, that the market value of said lumber from 1897 to January 1, 1902, was increased not less than sixty per cent. Respondents admit that such increase as there has been in the cost of production of yellow-pine lumber consists in the items of raw material, labor, and feed for stock, all of which have materially advanced in price.

Respondents admit that in the manufacture of lumber, as in the manufacture of everything else, the minimum cost per unit can only be obtained where conditions permit maximum production; but respondents aver that the conditions existing in Mississippi do permit the maximum production of lumber in those States.

The lumber from the Mississippi Yellow Pine Association can successfully compete in the territory on and north of the Ohio River with the yellow pine from Arkansas and with the fir from the Pacific coast points and with the white pine from Canada and the Northern States. The rates on yellow pine to the territory on and north of the Ohio River from Mississippi have not been increased any more than the rates from Arkansas to the same territory; and the cost of the production of yellow pine lumber in Mississippi has not increased any more than the cost of production of yellow pine lumber in Arkansas.

Respondents deny that they have for a considerable period "utterly" failed to furnish cars for the transportation of lumber. On the contrary, respondents aver that they have furnished for the transportation of lumber and other traffic all the cars that they own

or could procure by the exercise of the greatest diligence. They admit that owing to the increase in traffic generally that they have not been able to furnish cars sufficient for the transportation of lumber; but the same has been, unfortunately, true with reference to all other kinds of traffic. The manufacturers of railroad cars and locomotives have been utterly unable to supply the very unusual demand of the last few years. Complainants adroitly omitted to state that their business has so increased in volume (even at the largely increased prices) that respondents and other railroads, while increasing their rolling stock as rapidly as cars could be secured, have been unable to keep pace with complainants' growing trade.

The Illinois Central Railroad Company has increased its freight-car equipment from 34,911 cars in April, 1900, to 51,262 cars in April, 1903, or 47 per cent. At the same time it has increased the carrying capacity of its equipment by increasing the size of the cars approximately 73 per cent, and every possible effort has been made to furnish the complainants with all the cars required. Large increases have also been made during the same period by all of the other defendants.

The average time required to load with coal is ten to fifteen minutes; to load a car with lumber, four or five days. This is due to the fact that practically a given number of cars must be furnished the mills each day, on account of their inability to store any quantity of lumber on their ramps for shipment. As they are constantly turning out different dimensions of lumber, they require several cars at one time to load each of the different sizes of lumber. They may complete one car in one day, and another car will take two or three days more, the loading depending upon the per cent of the different sizes of lumber gotten out by the mill.

Lumber is shipped to large business centers, and after arrival is held several days. Frequently it is resold to distant points, and defendants are obliged to let their equipment run through and be deprived of its use for weeks and months. Cars loaded with coal are not generally permitted to go beyond the switching limits at all important business centers. For nearly ninety days past practically all of the trunk lines within the competitive territory referred to in the bill north of the Ohio River had either permanent or temporary embargoes on account of being overcharged with freight, except as against perishable live stock. This resulted in defendants and their connections being forced to hold on their rails thousands of cars loaded with lumber, which prevented their getting their equipment released and back to the loading point for protecting the traffic which was being offered.

Respondents deny that complainants' profits have been reduced. On the contrary, respondents aver that said profits have been largely increased, and that they have been phenomenally prosperous and are rapidly accumulating great wealth.

After the restraining order was granted in this case railroad companies west of the Mississippi River which are carriers of yellow pine to the competitive territory in question revised their rates to put their shippers on a parity with what they consider to be the status of complainants as fixed by said order, and thus the direct effect of the order was to bring about a change in rates in the trans-Mississippi territory.

Respondents deny that the cost to them and other railroad com-

panies of furnishing transportation to the public has been constantly or at all reduced by reason of increased capacity of cars or locomotives, or by the use of modern appliances which dispense with the employees necessary to operate trains. On the contrary, respondents aver that the cost to them and to other railroads in the Southern States of furnishing transportation has been materially increased during the last few years, on account of the material increase in the prices of lumber, cross-ties, iron, coal, wages, and everything else which enters into the cost of railroads of furnishing transportation.

4. Respondents deny that the increased rate, as well as the preexisting rate, or that either of them, is arbitrary, unjust, and discriminatory.

They deny that there is any discrimination through or on account of disguised rebates. They severally deny that either of them has any connection with, or participation in any way with, any rebates, disguised or otherwise, given to shippers in any way from Arkansas and Louisiana. They say that the rates charged shippers from those territories are made by railroad companies over which they have no control whatever, and with which they have no agreement, understanding, or combination whatever in respect of any rebate, disguised or otherwise, given to any such shippers. They deny that they are under any obligation, either under the common law or under any statute of the United States, to meet the rates given by carriers from Arkansas and Louisiana west of the Mississippi River, and they deny that they have any power in any way to regulate or control such rates.

What complainants mean by such disguised rates is that certain railway companies in Arkansas and Louisiana make a division of rates with certain of their shippers who own and operate in connection with their roads what are called tap-line roads, and that by reason of the amount so allowed by such railway carriers west of the Mississippi River to such owners of tap-line roads such owners get an advantage whereby they are enabled to make a larger profit in selling their lumber in competition with complainants than they would make but for such alleged tap-line division. These defendants state that they have nothing to do with, and no control over, any of said divisions, and are not participants in any way therein. If such divisions constitute rebates and are unlawful, then the proper remedy is not to seek an injunction against defendants for the purpose of controlling their rates and making them bear the burden of an unjust and unlawful discrimination exercised by other common carriers who are their competitors and over whom they have no control. The proper and only remedy for such a wrong, if any wrong exists, is before the Interstate Commerce Commission, or before the United States court in a direct proceeding against such alleged wrongdoers.

Defendants aver that the Central Yellow Pine Association, of which complainants are members, has, at the instance of complainants, filed a complaint before the Interstate Commerce Commission at Washington against the Vicksburg, Shreveport and Pacific Railway Company, the Kansas City Southern Railway Company, the St. Louis Southwestern Railway Company, and the St. Louis, Iron Mountain and Southern Railway Company, seeking relief from the

very conditions complained of in respect of such alleged rebates in this bill, and they say that this court has no jurisdiction over the present complaint in that respect and can make no proper decree against these defendants which would remove the evil, if an evil exists.

5. Respondents again deny that the proposed increase in rates on yellow-pine lumber is either arbitrary or unjustly discriminative.

The defendant, the Mobile and Ohio Railroad Company, says that the freight now charged on walnut, cherry, cedar, and mahogany lumber from Mobile, the only lumber to which this increase does not apply, is higher than the proposed advance rate on yellow-pine lumber from the said territory.

The Illinois Central Railroad Company says that the increased rate will apply to all woods except those in regard to which the rates are fixed by water competition.

The Gulf and Ship Island Railroad Company says that it has no interest whatever in the increased rate and is not a participant in the increase.

The Southern Railway Company and the Alabama and Great Southern Railroad Company say that the said increase will be made to apply to all other woods that may be carried by it from Mississippi yellow-pine territory to the competitive territory mentioned, though there is no other lumber shipped over its line to Ohio River points or beyond from the yellow-pine territory of Mississippi which comes into competition with yellow-pine lumber.

The New Orleans and Northeastern Railroad Company says that it handles no other lumber from the Mississippi yellow-pine territory which to any appreciable degree comes into competition with yellow-pine lumber.

Respondents admit that within the past four years the rate on lumber between the points designated has already increased 2 cents per hundred, but they deny that it has increased in many cases 3 cents per hundred. The said increase of 2 cents was as follows: One cent to points on the Ohio River and an additional 1 cent to points within the territory designated north of the Ohio River. Of this increase the railroads north of the Ohio River received the benefit of 1 cent, and therefore the railroads south of the Ohio River have received the benefit of only 1 cent.

It is denied that yellow-pine lumber has been singled out to bear the whole burden of increased rates. On the contrary, on account of the general prosperity of the country and of those engaged in business, and on account of the increased cost of doing business to the railroad companies and the marked reduction in their net revenues, although there has been a great increase in the volume of service performed, they have felt the necessity for increasing their revenues and their right to participate in the general prosperity enjoyed by all other industries in the country, and have therefore sought from time to time, with a due regard to the industries along their lines and to their patrons, to equitably distribute the burden of the aggregate increase which they felt that they would be justified in making, and so have not undertaken to put and have not put all such increase upon yellow-pine lumber, but have distributed it and are expecting to continue to distribute it fairly and justly among their shippers. The Interstate Commerce Commission in its last annual report mentioned

five hundred and thirty-one commodities upon which the rates have been increased in the southern territory by advances in the transportation, which commodities are now moving freely notwithstanding that their rates have been advanced.

As an illustration of how the railroad companies generally have, during the past year, been doing a larger volume of business at greatly increased expense and with a less net revenue, defendants show that for the seven months ending January 31, 1903 and 1902, the Illinois Central Railroad Company had income from traffic as follows:

	This year.	Last year.	Increase (+) or decrease (-).
Miles operated	4,300	4,284	+16
Gross receipts from traffic	$25,834,846	$24,128,583	+$1,706,263
Less operation expenses and taxes	18,100,820	16,106,723	+ 1,994,097
Excess of receipts over operation expenses and taxes	7,734,026	8,021,860	— 287,834

Thus it is shown that for the seven months ending January 31, 1903, there was an increase in gross receipts from traffic over the corresponding seven months of the preceding year of $1,706,263.00; that for the same period there was an increase in operating expenses of $1,994,097.00, and that notwithstanding said increase of $1,706,263 of gross revenue there was a decrease of net revenue of $287,834.00. This with varying figures applies to all of the defendants. This increase in operating expenses was due to increase in the wages of employees as well as in the cost of supplies. The compensation of almost every class of railroad labor has been materially increased during the past year. The taxes of the Illinois Central Railroad Company increased $65,069.51, or 4.8 per cent. The proportion of operating expenses to gross earnings on the Illinois Central Railroad for the first eight months of the current fiscal year was 66 per cent, as against 63 per cent during the same period of the previous year, and this comparison is made on exactly the same basis and under the same policy of maintenance of the property as under former years, no unusual amounts having been charged to betterments, improvements, or other accounts.

For the eight months ending February 28, 1903, compared with the same period a year ago, the operations of the Illinois Central Railroad Company show that the average receipts per ton per mile of revenue freight were 5.87 mills, as against 6.38 mills last year, and that in spite of the increased expenses and reduced net earnings the tons of freight carried during the period mentioned were 14,530,311 tons this year, as against 12,675,287 tons last year, an increased tonnage of 14.6 per cent, with a decrease in net revenue of 0.2 per cent. In the month of February, 1903, the number of employees required to handle the increased tonnage on the Illinois Central Railroad was 35,575, as against 31,482 engaged in the service during the same month of the previous year.

For the eight months ending February 28, 1903, the operating expenses per revenue train mile were $1.0311, as against $0.9717 for the

eight months of the previous year, showing an increase of nearly $0.06 per revenue train mile.

The Southern Railway Company shows that the net revenues of said company have not been rapidly and steadily increasing, and that the cost of transportation has not been as constantly reduced by reason of increase in capacity of cars and locomotives and by the use of modern appliances which dispense with employees necessary to operate trains, and says that the cost of transportation has very greatly increased by reason of increase of wages and the cost of material, supplies, and equipment. It says that under existing conditions the net revenues of said company are actually decreasing, and in evidence of this fact says that, eliminating the detached lines of Southern Railway Company in Kentucky and north of the Ohio River, and treating of the Southern Railway's system proper, the increase in gross earnings for the period of eight months—July, 1902, to February, 1903, inclusive—was $2,580,884.96, while the net earnings decreased $77,773.69, and it further says that the results shown do not fully represent the increased cost of operation, because lumber and other materials purchased at advanced prices and not yet used have not yet been charged to cost of operation and will not be so charged until used.

VI. Respondents do not know, nor have they any information or belief, as to what contracts were entered into by the complainants, or either of them, for the delivery of lumber to points on or north of the Ohio River (that being the territory affected by the increased rate) before they received notice of the proposed increase in the lumber rates. Respondents insist that under the law all interstate railroad tariffs are issued subject to change upon giving only such notice as is required by the act of Congress to regulate commerce. Respondents aver that though said increased rates were filed to take effect April 15th, 1903, each of respondents had before that time, separately and independently, given notice of such an increase of rates, and said proposed increase of rates was well known to complainants and the other members of the Central Yellow Pine Association to have been in contemplation by each of respondents for at least sixty days before said 15th of April, 1903. Each of respondents separately and independently gave notice during the month of February, 1903, that it would increase its lumber rates effective March 1st, 1903. In the early part of February, 1903, the lumber manufacturers in Mississippi, knowing of said proposed increase, represented that it would take fifty-six days for them to be able to fill their existing contracts, and urged a postponement to enable them to do so, and in order to meet their requests each of the respondents, separately and independently, postponed the going into effect of said increase on its lines until April 15th, 1903, which gave complainants and the other lumber manufacturers more that the fifty-six days which they had requested. Not only so, but for some months prior to February, 1903, complainants and the lumber manufacturers knew that an increase of lumber rates was in contemplation by each of the respondents, and if complainants or other lumber manufacturers made any contracts thereafter they made them with such knowledge before them. Complainants and the other manufacturers also knew the difficulty which respondents had in obtaining cars to move the lumber and the rate at which cars had been theretofore furnished;

and the statement made by complainants and other lumber manufacturers as to the fifty-six days needed to fill their contracts was made with such knowledge and with no understanding as to any different method of furnishing cars in future.

Respondents aver that they have respectively furnished complainants and the other members of the Central Yellow Pine Association with sufficient cars to have moved whatever lumber was under contract prior to April 15th, 1903; and if such lumber has not been shipped it has been due to the fact that the said cars have been used by complainants and other members of the said association to ship other lumber which was not under contract prior to April 15th, 1903. Respondents therefore deny that they have failed to supply sufficient cars to move such of said manufactured product as was under contract prior to April 15th, 1903; and respondents have no knowledge, information, or belief as to what, if any, of said manufactured product that was under contract prior to April 15th, 1903, complainants or other members of said association had on hand at the time of the filing of the bill in this case.

VII. Respondents deny that the Southeastern Mississippi Valley Association is employed by respondents and other carriers or by either of respondents as a medium through which to effect a lessening of competition. Respondents again deny that said association, in legal contemplation or otherwise, constitutes a combination or conspiracy in restraint of commerce between the States.

Respondents have hereinbefore filed a copy of the articles of association of said Southeastern Mississippi Valley Association as "Exhibit No. 2" to this answer. Said articles state fully and truly the only subject or purpose of which said association was organized and is now maintained. Copies of said articles have been filed with the Interstate Commerce Commission. Respondents aver that actually, as well as nominally, any railroad company that is a member of said association may and does fix its own rates and promulgate its own tariffs, and no such company is bound by any contract, agreement, combination, or conspiracy, written or oral, expressed or implied, to change its rates so as to conform to the rates of any other carrier; and in point of fact there is no understanding, general or special, under which any member of said association is under the slightest obligation, legal or moral, to change its rates or to make its rates conform to the rates, views, rules, or regulations of any other carrier, whether such other carrier be a member of said association or not. Respondents deny that in the matter of increased rates on lumber the various lumber-carrying roads have acted in concert, or have acted through said association. Each of respondents, whether it be a member of said association or not, has acted for itself, and itself alone, in the matter of said increased rates on lumber. As a matter of course, where two or more railroads are connecting links in a through line, such roads do act in concert, because all of them must agree what the through rates shall be, and how they shall be divided between them; but so far as companies, members of said association, are competitors of each other, there is no concert, combination, conspiracy, agreement, or understanding whatever between them; each company making its own rates and issuing its own tariffs.

Respondents again deny that they have singled out lumber as a

commodity upon which to lay or impose an extra burden. They have not treated lumber otherwise than as they have treated all other commodities moving under substantially similar circumstances.

Defendants further show that when the question of increasing the rates on yellow pine lumber was being considered and when the defendants severally first determined that such rates would be put in effect on March 1, 1903, the Southern Lumber Manufacturers' Association, of which all of complainants were and are now, as defendants are informed and believe, members, and also several of complainants, to wit: The Butterfield Lumber Company, J. J. White, Amos Kent Lumber and Brick Company (Limited), Natalbany Lumber Company, Pearl River Lumber Company, A. W. Stevens Lumber Company, and Chicago Lumber and Coal Company, which was general sales agent for several of complainants, filed written protests against such increase of rates. Such protests proceeded almost exclusively upon the representation that it was unfair and unjust to increase such rates without longer notice on account of contracts which they had to fulfill. Some of them also brought forward the alleged competition from northern lumber regions, but the burden of the complaint was on account of the alleged inadequacy of notice. The said Southern Lumber Manufacturers' Association in their letter of February 11 stated as follows:

"The Southern Lumber Manufacturers' Association desires to go on record as not opposing an advance in freight rates on their commodity, provided the burden is equitably distributed and rates from competitive territory are equalized."

Copies of said protests are hereto attached, marked "Exhibit X 1," "X 2," etc., numbered up to 9. The originals will be produced at the hearing. After these protests were made the defendants, as has before been stated, postponed the putting into effect of said rates until April 15, 1903.

Complainants, after having all this notice, waited until said rates were put into effect and then brought this suit for the purpose of getting a temporary restraining order, and thereby disturbing and throwing into confusion all the freight rates on yellow-pine lumber for a vast territory.

It is the policy, as expressed in the interstate-commerce law, to entrust the whole question of bringing suits of this character for the regulation of interstate rates to the Interstate Commerce Commission, a body having jurisdiction over the entire United States, and having by virtue of its position experience and knowledge of the intricate and complicated conditions affecting interstate rates and their reciprocal relations to each other. Defendants submit that it was never intended that suits should be brought by individual shippers or an association of individual shippers for any such purpose. Complainants, by their counsel, and some of them in person, brought the whole subject-matter embraced in this bill to the attention of the Interstate Commerce Commission, not by formal written complaint, but in such a way that defendants were requested by the Commission to appear before them in Washington, which they did, by their representatives, on April 11, 1903. All of the questions herein mooted were discussed before the Commission fully and freely from every standpoint, and a number of complainants and their counsel ex-

pressed their views repeatedly and vigorously upon the attention of the Commission. While it may be said that no formal complaint was made in such a way as to force the Commission to take affirmative or negative action on such complaint, nevertheless defendants say that it is true that all of the considerations involved in this bill and all of the subject-matters of complaint were brought directly and pointedly to the attention of the Commission, and that the Commission has never seen proper to take any steps in the premises, which they unquestionably would have done if they had been at all impressed with the view that complainants' representations were well founded or that anything had been done by the defendants in respect of the matters complained of calling for any action by them. The interstate-commerce law not only authorizes but enjoins upon them the duty of taking action where infractions of the law are called to their attention.

Respondents, having fully responded, pray that said rule be discharged and that the restraining order be dissolved.

J. W. FEWELL & MCWILLIE & THOMPSON,
Solicitors New Orleans & N. E. R. R. Co.
E. J. BOWERS & MCWILLIE & THOMPSON,
Sol. for G. & S. I. R. R. Co.
MAYES & HARRIS,
Sols. for Illinois Cent. R. R. Co.
E. L. RUSSELL & S. R. PRINCE,
Sols. for M. & O. R. R. Co.
CATCHINGS & CATCHINGS & J. W. FEWELL,
For Southern Railway & A. G. S. Railway.

STATE OF MISSISSIPPI, *County of Hinds:*

Personally appeared before me, A. G. Moore, a notary public duly appointed and qualified in and for the State and county aforesaid, L. Green, Thomas P. Hale, L. Sevier, C. C. Cameron, who, being each duly sworn, depose and say as follows, to wit:

The said L. Green, that he is the assistant general freight agent of the Southern Railway Company; the said Thomas P. Hale, that he is the second vice-president of the Gulf and Ship Island Railroad Company; the said L. Sevier, that he is the general freight agent of the Alabama Great Southern Railroad Company; C. C. Cameron, general freight agent of the Illinois Central Railroad Company, all of said corporations herein named being parties defendant to the bill in which response to the rule to show cause is above made. All of said deponents, being duly sworn, say that they are severally charged with the supervision of the matters of traffic of their respective railroad corporations which they represent as aforesaid; and all of said deponents also say that they have heard read the foregoing response, and the statements therein made, so far as they are made as of the knowledge of the respondents, are true, and so far as they are made on information and belief that they are true to the best of their several knowledge, information, memory, and belief.

L. GREEN.
THOMAS P. HALE.
L. SEVIER.
C. C. CAMERON.

Sworn and subscribed to before me this 12th day of May, A. D. 1903.

[SEAL.] A. G. MOORE, *Notary Public.*

STATE OF ALABAMA, *Mobile County.*

Personally appeared before me, S. R. Prince, a notary public duly appointed and qualified in and for the State and county aforesaid, J. T. Poe, who, being duly sworn, deposes and says that he is the traffic manager of the Mobile and Ohio Railroad Company, the said company being a party defendant to the bill in which response to the rule to show cause is above made, and the said J. T. Poe, being duly sworn, says that he is charged with the supervision of the matters of traffic of said defendant; that he has read the foregoing response and the statements therein made, so far as they are made as of the knowledge of the respondent, are true, and so far as they are made on information and belief that they are true, to the best of his knowledge, information, memory, and belief.

J. T. POE.

Sworn and subscribed to before me this 13th day of May, A. D. 1903.

[SEAL.] S. R. PRINCE, *Notary Public.*

STATE OF LOUISIANA, *Parish of Orleans.*

Personally appeared before me, Purnell M. Milner, a notary public duly appointed and qualified in and for the State and parish aforesaid, Thos. F. Steele, who, being duly sworn, deposes and says that he is general freight agent of the N. O. and N. E. R. R. Company, the said company being a party defendant to the bill in which response to the rule to show cause is above made, and the said Steele, being duly sworn, says that he is charged with the supervision of the matters of traffic of said defendant; that he has read the foregoing response and the statements therein made, so far as they are made as of the knowledge of the respondent, are true, and so far as they are made on information and belief that they are true, to the best of his knowledge, information, memory, and belief.

T. F. STEELE.

Sworn and subscribed to before me this 13th day of May, A. D. 1903.

[SEAL.] PURNELL M. MILNER, *Notary Public.*

C. W. Robinson Lumber Company et al. Illinois Central Railroad Company et al. No. 701.

OPINION OF COURT REFUSING RESTRAINING ORDER.

The complainants filed their original bill on the first day of May, 1903. The averments of the bill were, in substance, that an increase of two cents per hundred pounds in the rates on lumber from the yellow-pine district of Mississippi to points on the Ohio River and beyond was unjust, unreasonable, and unlawful. It also averred that the increase was unjust, unreasonable, and illegal for the reason that it amounted to a discrimination against the Mississippi yellow-pine district in favor of points in Arkansas and Louisiana west of the

Mississippi River on yellow pine lumber and other woods in the same territory.

Complaint was also made that the carriers impose upon the shippers of lumber the burden of equipping cars at their expense, and at the same time charge for the increased weight caused by this equipment. It alleged that the defendant railroad company and others were members of the Southeast Mississippi Valley Association, which was an illegal combination in restraint of interstate trade, and that the advance in rates was effected through the agency of this association.

It was also alleged that complainants before receiving notice of the proposed increase in rates had entered into large contracts for the delivery of lumber to points within the territory described and that they had not been able to fill these orders because of the fact that the railway companies had failed to provide sufficient equipment, and that they had on their skids a large quantity of lumber awaiting transportation to be delivered in accordance with such contracts. It was also alleged that rates on yellow-pine lumber were so high as to make it difficult to compete with lumber from northern points and from the Pacific coast, and that this also amounted to a discrimination against the yellow-pine district of Mississippi; that lumber was perhaps the most profitable of any freight originating within the southern territory—value, tonnage, and cost of handling considered.

Statements were made as to the magnitude of the yellow-pine lumber business in Mississippi, the quantity manufactured and shipped, etc. It was also alleged that the old rate, as well as the increased rate, from Mississippi points to Ohio River points and beyond is from two to five cents per hundred higher than rates from Arkansas and Louisiana west of the Mississippi River, because of disguised rebates in the shape of tap-line divisions. It though was not alleged that the defendant companies had any such tap-line division of rates. It was also alleged that the companies had singled out yellow-pine lumber to bear the whole burden of what they claimed was a necessity for raising additional revenue for their uses. The complainants alleged also that both the interstate-commerce law and the antitrust law of 1890 were violated by the defendant companies by reason of the facts alleged in the bill. The prayer was that the court would grant a temporary restraining order restraining the defendants from continuing in effect the said increase of rates, or any increase of the rates until the further order of the court; that the court would decree that the existing rates were unjust, unreasonable, and illegal, as being discriminatory against Mississippi points in favor of Arkansas and Louisiana west of the Mississippi River in yellow-pine lumber, and also in so far as they discriminate in favor of the other woods in the same territory and impose upon a shipper of lumber the burden of equipping cars at the expense of the shipper. That upon the hearing the court would decree that a writ of injunction should issue enjoining the defendants from continuing in effect and operation the said increase of rates, and also enjoining the railroad companies from at other times or in other ways increasing the previously existing rates from and to such points without previous application to the court for a modification of the injunction. And that the Southeast Mississippi Valley Association be declared an illegal combina-

tion in restraint of interstate trade, and that the defendant companies be enjoined from prosecuting the purposes of such illegal combination, through the medium of said association, in so far as concerned the transportation of lumber to and from points directly affecting the rights and interests of complainant.

A temporary restraining order was issued by the court and a rule made upon the defendants to appear on the 15th day of May, 1903, and show cause why an injunction should not be granted as prayed for. Upon representations made by defendants that great harm might result to them from the restraining order pending the application for the injunction, the court granted permission to defendants to continue to exact the increase in rates, but with the understanding that if the court should decide against them they would refund to the complainants the excess in rates so exacted and received. Upon the day named the defendants filed a demurrer to the bill, presenting various objections in point of law to the right of complainants to maintain their bill and obtain the relief prayed. It is not necessary to set out here the various grounds of the demurrer, since upon the argument the point chiefly pressed, and upon which the case went off, was that this court could not grant the relief prayed, for the reason that if it did so it would in effect fix a maximum rate, and that this was not a judicial act which the court could perform. Other objections were made, but they are not specifically referred to, for the reason stated. The restraining order was dissolved and the bill dismissed.

On the 4th day of June, 1903, the plaintiffs filed by leave of the court an amended and supplemental bill. The defendants filed a demurrer in substantially the same form as that filed to the original bill, but this court indicated a desire to hear testimony, and complainants and defendants offered testimony with the understanding that the demurrer was not waived by the response of the defendants and would be considered by the court along with the facts developed. The defendants filed a joint and several response to the amended and supplemental bill. Many affidavits were filed both by plaintiffs and defendants and many authorities cited in the argument of counsel. After a thoughtful consideration of the supplemental or amended bill it seems that its allegations are merely an elaboration of the averments of the original bill and somewhat argumentative.

The Southeast Mississippi Valley Association was made a defendant, but no relief prayed against it as in the original bill, and no relief prayed against the requirement of the companies that shippers should equip their cars with standards and strips for which freight was exacted.

The prayers of the supplemental or amended bill is in the following words:

"That said rate on yellow-pine lumber, as increased on April 15th, 1903, by said several defendant companies, as now in force, be decreed to be unreasonable, unlawful, arbitrary, and discriminatory and to be violative of the United States statutes.

"That the court will make a rule on each of the defendants commanding them to appear before one of the judges of this court at such time and place, etc., then and there to show cause why said injunction as prayed should not be granted, and after due proceedings

that an injunction and writ of injunction issue enjoining the defendant railroad companies from enforcing the said unlawful, unjust, unreasonable, and discriminatory rate on yellow-pine lumber from points within the State of Mississippi to points without said State and to points on the Ohio River and beyond, and east of the Mississippi River, and that on final hearing said injunction be made perpetual."

It seems to me that a careful inspection of the prayer for relief in the amended and supplemental bill shows that it is substantially the same as that contained in the original bill, and that the distinction between the two, which was insisted upon in the argument, is without foundation, except in so far as there is some slight difference in phraseology.

In the original bill it was asked that the defendant companies be enjoined from continuing in effect and operation the said increase in rates, and also from at other times or in other ways increasing the previously existing rates without previous application to this court for a modification of the injunction.

I thought *then*, and think *now*, that a decree such as that prayed for would have had the effect of *prescribing a maximum rate* beyond which the defendants could not go, and beneath which they must adjust their rates.

The prayer of the amended or supplemental bill is that the increased rate be decreed to be unreasonable, unlawful, arbitrary, and discriminatory and to be violative of the statutes of the United States and that this court should make a decree enjoining the defendant companies from enforcing the said unlawful, unjust, unreasonable, and discriminatory rates. Now, it seems perfectly clear to me that the decree prayed for in this supplemental or amended bill, except in so far as it suggests no provision for a modification of it in the future, upon the application of the defendant companies, would be exactly the decree prayed for in the "original bill."

If this court should make a decree enjoining the defendant companies from enforcing the increased rates, would I not be prescribing a maximum rate beyond which the defendant companies could not go, and beneath which they must adjust their rates? It seems clear to me that there is no distinction between the decree prayed for in the "original bill" and that prayed in the "amended and supplemental bill." I think therefore that my ruling upon the demurrer to the original bill must be sustained—that this court has no jurisdiction to grant the relief prayed by the supplemental bill, for the reason that to do so would also be to prescribe a maximum rate. Therefore the complainants are not entitled to a restraining order as prayed.

H. C. NILES, *Judge.*

C. W. ROBINSON LUMBER CO. ET AL.
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET ALS.
} In equity.

The above entitled cause having been argued and submitted to the court in term time and taken under advisement by it to be considered and decided in vacation, and the court now having duly considered the same both on the original bill and the demurrer thereto, and also

on the amended and supplemental bill and the demurrer thereto, and on the motion of complainants for a preliminary injunction, and the court being now fully satisfied in the premises, it is ordered, adjudged and decreed:

First. That the demurrers to the original bill and to the amended and supplemental bill be and the same are hereby sustained because this court has no jurisdiction to grant the relief prayed by the original and amended and supplemental bills for the reason that to do so would be to prescribe a maximum rate of freight which this court can not do because the same would be to exercise a legislative function.

Secondly. That the restraining order in this cause based on the original bill be discharged as of the 29th day of May, 1903; and that the preliminary injunction prayed for by the complainants in this case both in the original bill and in the amended and supplemental bill be and the same is hereby refused and denied.

Thirdly. That the said original bill and the said amended and supplemental bill be and the same are hereby dismissed without prejudice to an application to the Interstate Commerce Commission touching the matters set up therein.

Fourthly. That the defendants in this case do have and recover of complainants herein the costs in this behalf expended, for which let execution issue.

Fifthly. That this order be by the clerk of the court formally and duly spread upon the minutes of this court under and pursuant to the order hereinbefore made taking the cause under advisement.

Ordered, adjudged, and decreed this the 1st day of July, 1903.

H. C. NILES, *Judge.*

Mr. ROBINSON. Another abuse is what is known as the "rebilling rate." By rebilling rate is meant a rate by which goods received in unbroken carload lots over one railway can be rebilled over the same or another line, completing one continuous trip of the same commodity, simply changing the consignee and altering the destination of the identical shipment, without unloading or handling of freight. Such rates or privileges are greatly abused, and are the source of a great amount of indirect rebating. To illustrate—and I must ask you to pardon the use of a fictitious road, but which really and truly represents several roads—on the St. Louis and Cartersville road, not many miles out of St. Louis, is the town of Hawkinsville, Ill., which town has a population of about 1,000 people. The blanket rate on yellow-pine lumber to Hawkinsville from all points in the yellow-pine belt is 24 cents per 100 pounds.

To St. Louis, Mo., the blanket rate is 20 cents per 100 pounds, but on lumber consigned to Hawkinsville the roads south of the Mississippi River are allowed 18 cents of the through rate, the St. Louis and Cartersville road receiving the remaining 6 cents of the through rate. At Hawkinsville there is no agent of the car-service association. By a secret understanding between the St. Louis and Cartersville road and certain favored shippers cars may be held at Hawkinsville for, say, fifteen days without any car service accruing, and then be billed or reshipped to any point in the central traffic association territory, and the name of the consignee changed. Let us assume that lumber shipped to Hawkinsville is rebilled to Johnsonville, in the extreme

northern part of Ohio, the through rate to Johnsonville from the yellow-pine belt being 31 cents. The St. Louis and Cartersville road, with its connecting lines, gets 12 cents per 100 pounds from St. Louis to Johnsonville, the result being that the through rate is reduced from 31 cents to 30 cents, and no car-service charges to follow. Hundreds of carloads of lumber are shipped to Hawkinsville yearly, only to be rebilled as outlined, and in the States of Illinois and Ohio there are other points at which the same practice is in full force.

The supreme court of Mississippi has just passed on one case of the abuse of the rebilling privilege, and in its opinion so clearly states what the practice is that I will beg the indulgence of the committee while I read the court's opinion:

Alabama and Vicksburg Railway Company *v.* The Railroad Commission of Mississippi.

[By Justice Truly.]

Many important questions are pressed on our consideration which, in view of our conclusion, we have found it unnecessary to discuss or decide.

The facts which are decisive of this controversy are very few, and a statement of them eliminates from consideration many of the more difficult questions urged by counsel. On December 13, 1902, the Board of Trade of Meridian presented to the railroad commission of Mississippi a petition praying that the proportionate rate of 3½ cents then in effect from Vicksburg to Meridian be made an open rate, subject to use of all shippers from Vicksburg. The rate referred to in the petition was a rate on grain products handled in carload lots. This class of freight, under the guise of a "rebilling rate," was transported from Vicksburg to Meridian at the rate of 3½ cents per hundredweight.

After full investigation the railroad commission on November 16, 1903, passed an order directing the Alabama and Vicksburg Railway Company "to put in effect over its line of road from Vicksburg, Miss., to Meridian, Miss., inclusive of both of said cities, from and after December 8, 1903, a flat rate of 3½ cents per hundred pounds on grain and grain products, and no more," the general terms of this order being limited, however, to grain and grain products handled in carload lots, this being the extent of the prayer of the petition filed with the commission.

Against the enforcement of this order the appellant procured an injunction. On final hearing on bill, answer, exhibits, and proofs the injunction was dissolved and a decree rendered dismissing the bill of complaint, and from that decree this appeal is prosecuted.

In reviewing the action of the railroad commission in promulgating the order in question it is necessary, to determine the justice and correctness of their action and their power and authority in the premises, to note the exact condition of affairs as they existed at and before the filing of the petition by the Meridian Board of Trade.

Vicksburg and Meridian, 140 miles distant one from the other, are the termini of the Alabama and Vicksburg Railway Company. Vicksburg, situated on the Mississippi River, has the advantage of both railroad and river competition; Meridian is a railroad center.

of considerable importance. In both cities there are many jobbers and wholesale dealers handling grain and grain products in large quantities and doing an extensive business both locally, by wagon trade, and over the railroads with adjacent towns. The authorized all-rail interstate rate on grain and grain products in carload lots from the chief market in West to Vicksburg is 12 cents, to Meridian is 14 cents. On account of the material advantage due to river competition, Vicksburg handles a portion of its business in grain and grain products by barge and gets the cheaper rate incident to water transportation during some seasons of the year, the minimum river or barge rate being admittedly lower than the all-rail rate. In July, 1902, the Alabama and Vicksburg Railway Company put into effect a so-called "rebilling" rate of 3½ cents per hundred pounds on grain and grain products, effective from Vicksburg to Meridian. A true rebilling rate is one in which goods received in unbroken carload lots over one line of railway can be rebilled over the same or another line, completing one continuous trip of the same commodity, simply changing the consignee and altering the destination of the identical shipment without unloading or handling of freight.

What is denominated a rebilling rate in this record does not, as actually employed, comply with the definition above given in several most important particulars. In the first place, the rate is not applied to consignments arriving over all connecting lines, but is only available to those receiving freight over the Vicksburg, Shreveport and Pacific Railroad. In the second place, the freight reconsigned over the Alabama and Vicksburg Railway line did not complete one continuous trip without handling or unloading, and was not necessarily, or even generally, the identical shipment which was originally consigned to the merchant in Vicksburg, the custom being that dealers in Vicksburg handling freight over the Vicksburg, Shreveport and Pacific Railroad Company could save their "expense bills" (or receipts showing the amount of freight which he had received over that line) and be granted the privilege within ninety days from date of such receipts of shipping freight of an equal quantity over the line of the appellant at the "rebilling" rate of 3½ cents per hundredweight. Thus a merchant receiving a carload of oats over the Vicksburg, Shreveport and Pacific Railroad could within ninety days of that date ship over appellant's line a carload of corn or other grain product without regard to the source from which it was procured. The result of this was that the merchant in Vicksburg who patronized the Vicksburg, Shreveport and Pacific Railroad Company could receive any amount of grain product by barge or otherwise and keep it stored in his warehouse with the full assurance that he could at any time within the period stated have the advantage of this cheap rate over appellant's line, whereas the merchant not dealing with this specially favored "associated line" was denied the same rate.

The only condition precedent to the enjoyment of the rebilling rate being that the consignor must first have received an equal quantity of freight over the line of the Vicksburg, Shreveport and Pacific Railroad. The effect of this custom was, as developed by the uncontradicted evidence, that while the Vicksburg dealer could not deliver grain products at the city of Meridian any cheaper than could the Meridian dealer, he could undersell and make prompter delivery in the towns adjacent to Meridian, and by natural location within its

territory, being able by operation of this arrangement to reach Laurel or Hattiesburg 3 cents per hundredweight cheaper than could the Meridian dealer. So a dealer in Vicksburg receiving a barge of corn by river could ship it under the guise of rebilling over appellant's road at 3½ cents per hundred pounds, while the Meridian dealer who might also receive a barge of corn at Vicksburg could only ship over the appellant's road by paying the prohibitive local rate of 10 cents per hundred pounds.

This statement, brief as it is, is sufficient to demonstrate that the practical working of the so-called "rebilling rate" was to give a very great advantage to those receiving freight over the Vicksburg, Shreveport and Pacific Railroad Company and to unjustly discriminate against all but this specially favored class, the result being that the Vicksburg dealer could, with impunity, invade the territory adjacent to Meridian and undersell its dealers at points more distant from Vicksburg and to reach which it was necessary to pass through Meridian. That this was the inevitable result of the arrangement in question is practically confessed by the appellant, but the force of the admission is sought to be avoided in two ways: First, it is said that the establishing of the rebilling rate was not a voluntary act on the part of the appellant, but that the plan was inaugurated under compulsion by reason of the "threat" and "menace" of the railroad commission to put into effect a flat rate of 3½ cents if appellant declined to adopt the rebilling arrangement herein referred to. That the appellant, while realizing that the rate was unreasonably low, decided it wiser to endure that ill rather than face other evils which it apprehended might be inflicted by the railroad commission.

While this is the distinct statement of the witnesses for appellant, we are constrained to hold, in the absence of record proof showing any official action by the railroad commission, that the putting in force of the rebilling rate in question was a voluntary act of the appellant. We are strengthened in this view by the uncontroverted statement in the record that at periods prior to the establishing of the present arrangement, other rates had been in force under which the appellant received no more for its services than it would under a uniform flat rate of 3½ cents. Again, we do not recognize it as a possibility under any contingency that the railroad commission of Mississippi would or need employ threat or menace to protect the rights of the public from the aggression or extortion of corporations. We rebuke the intimation as an unwarranted aspersion of the railroad commission. A state tribunal charged with the duty of exercising "a watchful and careful supervision over the tariffs of charges of every railroad," and of revising "the same from time to time as justice to the public and the railroad may require," is clothed by law with necessary power to achieve the purposes of its existence, without resorting to menace or threat to extort from any corporation subject to its lawful supervision an unreasonable reduction of rates. Nor do we admit that the necessity can ever exist for appellant, or any other corporation, to submit to unjust or unauthorized regulations by the railroad commission of Mississippi, when the courts of the land stand ever open, able, and willing to protect them from any oppressive action. If, in fact, it be true that the so-called rebilling rate establishes an unreasonably low compensation for the transportation of grain and grain products, the same was inaugurated by order of the commission,

then the appellant had a complete and adequate remedy by contesting in a legal way, the reasonableness of the rate and the power of the railroad commission to enforce it. We express no opinion, because not involved necessarily in the determination of this particular suit, as to whether the railroad commission would have had the authority to establish in the first instance the rebilling arrangement now in force. This record does not show that the rate was established in pursuance of any official order or action on the part of the railroad commission. We deal with facts as we find them.

In the next place it is urged by the appellant that the rebilling arrangement operates uniformly as to all shippers occupying similar positions. That if discrimination results, it is not on account of the rate itself, but because of differences in the natural advantages incident to location which one shipper has over another. It is insisted that the appellant denies to one who will comply with its conditions the right to avail himself to the fullest extent of the advantage of the same rate which is granted to other dealers; that if the Meridian dealer will receive freight over the Vicksburg, Shreveport and Pacific Railroad, consigned to him at Vicksburg, he can thereafter, within ninety days, also rebill freight to an equal amount over appellant's line at the same rate given the Vicksburg dealer.

And this, it is urged, is a granting of the same privileges to all, and that therefore appellant is not guilty of unjustly discriminating against one, or unfairly favoring another, class of shippers, but the condition prerequisite to the enjoyment of the rebilling rate is in and of itself a discrimination. No one is granted the rate who has not first received an equal amount of freight over the Vicksburg, Shreveport and Pacific Railroad, and who can produce "expense bills" paid within ninety days of the proposed shipment, the necessary result being that the Meridian dealer having no means of disposing of the freight arriving over the Vicksburg, Shreveport and Pacific Railroad can not accumulate the "expense bills" demanded. Hence such shipper can only bill the identical commodity and car originally consigned to him, which goes forward and completes one continuous journey. This is a "rebilling" in its true meaning, and no one could justly complain if this plan was strictly enforced and uniformly adhered to. But, as hereinbefore pointed out, the plan now in vogue between the appellant and the Vicksburg, Shreveport and Pacific Railroad Company does not operate fairly or uniformly. In this the Vicksburg dealer having disposed locally of the original shipments received by him over the Vicksburg, Shreveport and Pacific Railroad, presents his accumulated "expense bills" and "rebills" freight received by him by barge or over the Yazoo and Mississippi Valley Railroad under a rate cheaper than that granted the general public to points by location naturally tributary commercially to Meridian. The statement of appellant that if the Meridian dealer will comply with certain required conditions that he can enjoy the same privileges, while phrased with specious fairness, it is in truth but making an offer of which stress of known and insuperable circumstances prevents acceptance or enjoyment. It is simply tantamount to saying that if he will become a Vicksburg dealer then he can have the same rate that other dealers so situate enjoy. This is the one thing that makes the operation of the rule a discrimination

in favor of a Vicksburg dealer and the only fact that gives the Meridian dealer the right to complain.

A "rebilling" rate to receive the sanction of law must operate uniformly and fairly and must be open to all alike. It can not lawfully be restricted to shippers who live in a certain locality, and who previously receive freight over a certain other favored associated carrier.

This consideration alone furnishes conclusive proof that the plan, in this record courteously termed "a rebilling arrangement," is, in truth, but a flimsy disguise for a plan which operates to the benefit primarily of the Vicksburg, Shreveport and Pacific Railroad Company; secondarily, and perhaps incidentally, to the advantage of the Vicksburg dealer; and ultimately but inevitably to the marked damage of the Meridian dealer. In a vague and shadowy way this arrangement is sought to be justified by the officials of the appellant by showing that in consideration thereof appellant is granted an extra proposition of freight and certain special privileges as to the use of cars by the Vicksburg, Shreveport and Pacific Railroad Company. It is not shown that the same privileges could not have been obtained from the Yazoo and Mississippi Valley Railroad Company. Nor, except in a most insubstantial manner, is it shown how a car received and unloaded on one day can be utilized in the hauling of another shipment made perchance ninety days thereafter. Or how it can benefit the appellant especially in view of the fact that the demand for empty cars must necessarily vary daily according to the pressure of traffic, and it is impossible to foretell what the demand may be at any stated future time. But if these facts be granted, and the moving considerations such as would stand the test as a permissible interstate traffic arrangement, still the incurable vice in the arrangement is in the unfair and discriminatory manner in which it is enforced, and the special privileges enjoyed by one, but from which another class of shippers is debarred.

The practical operation of the plan being thus demonstrated as causing a gross discrimination, the next question presented is whether the State railroad commission was vested with authority to pass the order, the enforcement of which is not assailed, the effect of the order being simply to convert the then existing so-called "rebilling rate" into an open or flat rate, with the result that all dealers handling grain or grain products in carload lots could enjoy the rate then in force from Vicksburg to Meridian. It will be noted that the rates then in existence were left undisturbed, the only change wrought by the order being to abolish the condition precedent insisted on by appellant restricting the rate to the exclusive benefit of each as had received previous and equal shipments over its associated line. The question propounded is easy of solution in view of the provisions of section 4397, Code 1893. That section authorizes the commission to docket, hear, and determine all complaints made of any tariff of rates, joint or several, made by any railroad or fixed or approved by the commission on the ground that the charges are for more than just compensation or that such charges or any of them amount to or operate so as to effect unjust discrimination. And when by regular procedure and full investigation, and after hearing proof, the commission is satisfied of the truth of the statement and the justice of

the complaint, it is given express authority to give notice to the railroads concerned of any change deemed proper and to require compliance with such orders

That is the exact legal status of the order presented to us for review. A tariff or rate had been established by the voluntary action of the railroad company; that tariff operated to work unjust discrimination; complaint was made; the proof fully supports the justice and the truth of the grounds on which the complaint is based; that proof satisfied the chancellor, and it satisfies us, that the so-called rebilling arrangement was simply a cloak assumed to conceal an arrangement which, while ostensibly granted as a concession to the Vicksburg dealers, was in truth devised for the ulterior purpose of fostering the interests of the Vicksburg, Shreveport and Pacific Railroad Company, and perhaps, as it is argued, to maintain present rates to Meridian for the benefit of an associated and connecting railroad at that point. In such state of case the power of the Commission to make any change which justice may demand is unquestionably so well established that we deem any citation of authorities further than a reference to the briefs of counsel a work of supererogation. It is urged, however, by the appellant that inasmuch as its intrastate business only yields a certain stated percentage, less than one-half of its gross revenues, that it does not in fact pay the expenses of maintaining and operating its road within the borders of the State, and therefore a reduction of existing rates is an indirect placing of a burden on interstate business, and this is expressly condemned as unlawful by the adjudication of the Supreme Court of the United States. To this argument it is replied by appellee that it is not shown with any degree of certainty the proportionate amount of the gross operating expenses of the railroad company incurred on account of the intrastate business, but this amount is only arrived at by estimation, and, therefore, this court can not say as a matter of fact, in the absence of positive proof, that the intrastate business of the appellant does result in a net annual loss, and as the findings of the railroad commission are dealt with as being prima facie correct, in the absence of direct proof of error, this court will affirm its findings of facts.

Again, it is stated by the appellant that the hauling of grain and grain products at a flat or open rate of 3½ cents per hundred pounds would produce less than the actual cost of transporting the freight, so that the more business of this character the appellant handles the greater its loss. That thus in effect is the taking of the property of appellant without due process of law, wherefore the order is void as being in contravention of the Constitution of the United States. To this it is replied that the figures shown in the record do not prove that freight handled in the usual and customary course of business as freight trains are ordinarily constructed, at the rate established, would result in a loss. Again, it is said, in further answer to this contention, that appellant is only entitled to fix such tariff of charges as will yield a fair compensation for the transportation and handling of freight and assure that the net profits arising from appellant's entire business, after payment of all operating expenses, will pay a reasonable interest on the value of its property, and as the real value of the property is not disclosed by the record the appellant has no ground of complaint on this score, and the court is furnished no defi-

nite proof to justify a finding of fact that the owners do not receive reasonable returns from their investment.

We decline to enter upon a discussion of either question; neither is necessarily involved in the decision of this case. It might be conceded that the intrastate business of the railroad results in a net loss, and might further be conceded that the transporting and handling of grain and grain products at the rate established may not in actual operation bring a fair remuneration when limited to that one commodity; nevertheless, the rate having been established by the voluntary action of the appellant, it must not be so enforced as to operate as an unjust discrimination against anyone. If the appellant chooses to establish, as to a certain favored class of shippers, a rate so low as to be unremunerative, justice demands, and the law will require, that the rate be granted to all alike. "Special privileges to none" is the rule of action by which common carriers must measure their conduct.

The decree is affirmed.

Senator DOLLIVER. Those cases must have related to matters within the States.

Mr. ROBINSON. Yes; but this same practice is applied to interstate commerce—this rebilling process—and, of course, in Mississippi, the road in question being wholly within the State, it is under the control of the State court and the State commission.

In conclusion, I think it fair to ask you—

By legislation prevent, so far as you can, the direct and indirect rebate.

Stop, so far as you may, the discriminating practices between individual shippers and between various sections.

Destroy the Robin Hood method now existing of rate making.

Preserve the natural advantage of location to every town and city in our common country.

Preserve equal rights for all and special privileges to none.

Provide that the transportation companies shall have a fair return on their investments, but not on the water contained in their stocks.

Provide that there shall be a method of guarding against the avaricious greed of those who own the king's highways.

Provide for the quick hearing and final disposition of complaints.

Give the country a strong commission with ample powers.

Legislate for the greatest good of the greatest number.

The CHAIRMAN. Mr. Robinson, you cite cases, as you say, of indirect rebates and discriminations there. Can not they be taken right before the court now under the law by the Commission?

Mr. ROBINSON. You understand that I am not a lawyer, and we had such bad luck, if you will pardon the expression, in our lumber cases down South before the circuit judges of the United States courts, that, to be perfectly frank with you, I am discouraged about going directly to the courts. What can you do if the judge says that he has no jurisdiction? Of course, our lawyer says that he has jurisdiction, but if the judge will not take the jurisdiction there is no way of compelling him to do so. That is the way with us down there.

The CHAIRMAN. Did you appeal from that decision in which the judge said he had no jurisdiction?

Mr. ROBINSON. No; we did not appeal for the reason that our attorneys recommended the other course, saying we would probably get

a quicker hearing before the Commission and if the Commission found in our favor we would have a prima facie case.

The CHAIRMAN. The Georgia circuit court, I believe, did say that it had jurisdiction.

Mr. ROBINSON. The Georgia circuit court declined to exercise jurisdiction, but referred the complainant to the Interstate Commerce Commission and intimated that if the Interstate Commerce Commission should find in favor of the complainant—that is, the Yellow Pine Association—that he would then entertain jurisdiction.

The CHAIRMAN. Don't you think that the question of rebates and discriminations is already covered by law and can be by summary proceedings?

Mr. ROBINSON. Of course, that is a very hard question for a layman to answer, but that they are not stopped is patent to everyone who uses a railway company as a shipper and who keeps his eyes open.

The CHAIRMAN. Has there been any suit brought within the last two or three years for rebates and discriminations in this section of the country?

Mr. ROBINSON. No; generally speaking, we have decided down there that life is a little too short to litigate with the railroad companies.

Senator DOLLIVER. Do you know of any amount in rebates that has been offered or received recently?

Mr. ROBINSON. You mean from rebates?

Senator DOLLIVER. Yes.

Mr. ROBINSON. No, sir.

Senator DOLLIVER. What sort of rebates are you talking about?

Mr. ROBINSON. I am talking about a case like the one I cited here, the case of rebilling, the privilege of rebilling. That privilege is not given to me or my neighbor. It is given, possibly, to a man in Chicago, a middleman or a commission man in St. Louis or in Indianapolis, who does not manufacture at all, but who does what you may possibly call the manipulating.

Senator DOLLIVER. Can you get a through rate on your product to any point?

Mr. ROBINSON. I can get that rate, very true, but this gentleman by this process gets a cent and in some cases 2 cents lower rate than I get, and he is not chargeable with any car service. In other words, this man may put in commission from Alabama or Mississippi cars of lumber for Hawkinsville. Now, he has first the advantage when that car gets to Hawkinsville of letting it lie there if he wishes for fifteen days without any car demurrage. Then he has the second advantage of the combination of the two rates, the rate to Hawkinsville and the rate to Johnsonville, in Ohio, being less than the through rate.

Senator CULLOM. How do you find out he has that advantage? Is it a published rate?

Mr. ROBINSON. Yes; the rates are published. I say they are; probably the divisions are known.

The CHAIRMAN. How do you escape the fifteen days' demurrage? Are not all interstate-commerce cars charged 20 cents a day?

Mr. ROBINSON. The railroads do not escape that charge, but the shipper must unload his car within forty-eight hours after he gets to Hawkinsville, but Hawkinsville being a very small place, there is no

car-service man there, so there is no report made of the fact that he does not unload his car.

Senator KEAN. From your description, it must be quite a distributing point.

The CHAIRMAN. Do you mean to say they sidetrack the cars there and leave them in order to practice this discrimination?

Mr. ROBINSON. Whenever it is necessary to do so.

The CHAIRMAN. Who does that?

Mr. ROBINSON. The railroad company.

The CHAIRMAN. Through what official?

Mr. ROBINSON. Through the traffic department, I suppose.

Senator KEAN. What road is Hawkinsville on?

Mr. ROBINSON. It is on the St. Louis and Cartersville road. This is an imaginary road, as I stated in my statement, though it is true of two or three other roads.

The CHAIRMAN. Why do you state an imaginary road?

Senator KEAN. We want facts, not imagination.

Mr. ROBINSON. I stated in my statement that it was an imaginary road. I disliked very much to state the names of roads that are guilty of this practice.

The CHAIRMAN. We feel that you ought to state the name of the road. Nobody is going to hurt you.

Senator FORAKER. Possibly he thinks that road would hurt him.

Mr. ROBINSON. I would state that the Vandalia road are allowing to be shipped to Jewett, Ill.——

Senator FORAKER. That belongs to the Pennsylvania?

Mr. ROBINSON. It is generally so understood.

The CHAIRMAN. And what other roads?

Mr. ROBINSON. The Big Four has been guilty of that practice.

The CHAIRMAN. That is the Cincinnati, Hamilton and Dayton?

Mr. ROBINSON. The Cincinnati, Hamilton and Dayton has been guilty of that practice.

Senator KEAN. Go ahead; let us have the stations on the point.

Mr. ROBINSON. Those stations have escaped my mind. They are only little side tracks. Rochester, Ohio, is one. I dare say that the Senator from Ohio [Mr. Foraker] never heard of Rochester, Ohio.

Senator FORAKER. Where is it?

Mr. ROBINSON. Up in the northern part of the State, not a great way from Cleveland.

Senator FORAKER. On what road?

Mr. ROBINSON. The Big Four road.

The CHAIRMAN. Any other road that does this?

Mr. ROBINSON. Yes; but I can not recall those little stations.

The CHAIRMAN. Any other road, I say?

Mr. ROBINSON. I could not say that it has ever come under my personal observation.

The CHAIRMAN. How oppressive is this? How much do you lose or does anybody else lose, and how much do the railroads make or lose out of it?

Mr. ROBINSON. It is in the line of what Professor Ripley said yesterday morning about wasted transportation. I believe that was his phrase. It is the endeavor of the roads to get a share of the business or a line of business that they are really not entitled to.

For instance, lumber going to Cleveland, Ohio, should go through the Louisville, Evansville, or Cincinnati gateway naturally, but if it be diverted by East St. Louis, then comes in a system of roads which get the business for Cleveland that ought really and naturally to go through the other gateways.

The CHAIRMAN. Have you not the same privilege of rebilling that the other fellow has?

Mr. ROBINSON. No.

The CHAIRMAN. To send it to the same point and hold it there fifteen days and then to rebill it?

Mr. ROBINSON. I could not do so.

The CHAIRMAN. Why?

Mr. ROBINSON. They have not made that arrangement with me. That is the principal reason.

The CHAIRMAN. Did you ask them?

Mr. ROBINSON. Well, I hardly think that is a fair question, Senator.

The CHAIRMAN. Well, I think it is entirely fair.

Mr. ROBINSON. I surely would ask them if I saw one other person getting that advantage.

The CHAIRMAN. What did they say to you when you asked them?

Mr. ROBINSON. Assuming this to be a violation of the antitrust law—of the Elkins bill—then you will admit that for the witness to incriminate himself is hardly a fair thing.

Senator FORAKER. Oh, the law provides that you shall be protected. The law of Congress provides that.

The CHAIRMAN. You are not in any danger. Just go ahead.

Mr. ROBINSON. I take it for granted in answer to the question of the chairman [Senator Elkins] that I could have gotten this privilege if I had made the effort.

Senator DOLLIVER. Then it was open to the public?

Mr. ROBINSON. No; I do not think that is so. I do not know about that.

The CHAIRMAN. You did not want to violate the law, or what was the reason?

Mr. ROBINSON. I was a little bit afraid of the law.

The CHAIRMAN. A little bit afraid?

Mr. ROBINSON. Yes; just enough to keep me from it.

Senator FORAKER. What is there about this rebilling that is wrong? They did not charge an additional rate.

Mr. ROBINSON. They gathered shipments through the reduced rate of freight.

Senator FORAKER. By rebilling?

Mr. ROBINSON. Yes.

The CHAIRMAN. Have you any of those bills of lading or anything that will show how it is worked?

Mr. ROBINSON. The entire secret-service force of the Government, possibly, would have to be put after that matter before it could be obtained.

The CHAIRMAN. Then, how did you find it out?

Mr. ROBINSON. I found it out by noticing an immense amount of lumber was moving to a certain given point, at Rochester, Ohio. I

said to myself that I thought I knew every town of any importance in Ohio, and asked myself where Rochester was. I found out that Rochester was merely a sidetrack—was a little town of 400 or less population away up in the northern part of the State.

The CHAIRMAN. Who routes the freight? Can you not route your own freight?

Mr. ROBINSON. In our section the railroad companies route the freight absolutely, but if a carload of freight is sent to Hawkinsville, if you please, as no other road reaches Hawkinsville but the one road, it is bound to go to Hawkinsville by their own lines.

Senator DOLLIVER. Where is this Hawkinsville?

Mr. ROBINSON. Hawkinsville is another name for Jewett, Ill. Jewett, Ill., you will scarcely find on that map.

Senator DOLLIVER. Where is it—in Illinois?

Mr. ROBINSON. It is a little way across the line from St. Louis. It is so small a place that it is not put upon the map.

Senator DOLLIVER. Near East St. Louis?

Mr. ROBINSON. Yes.

Senator DOLLIVER. Where did this lumber you talk about start from?

Mr. ROBINSON. From Mississippi.

Senator DOLLIVER. And these people carry it up to this little station near St. Louis and then transfer it to another station near Cleveland?

Mr. ROBINSON. Oh, no; to any point on the Central Traffic Association territory. In other words, it may go to Cleveland.

Senator DOLLIVER. Why do they bill it to Rochester?

Mr. ROBINSON. In order to get the benefit of keeping it in transit fifteen days without any extra cost, first.

Senator DOLLIVER. I do not see how that would affect the question of billing it to Rochester.

Mr. ROBINSON. Because that enables the wholesaler to have fifteen days' extra time in which to sell the lumber.

The CHAIRMAN. Why haul it all around the country and then reduce the rate on that long haul?

Mr. ROBINSON. In order that roads that are not entitled naturally to this traffic may by this process get the traffic.

Senator DOLLIVER. What roads from Mississippi to East St. Louis?

Mr. ROBINSON. Any of the trunk lines—the Illinois Central, the Louisville, or the Southern Railway lines. The roads in Mississippi south of the river are not parties to this arrangement, you understand. In fact, as fast as they find it out they break it up, or try to. They do not want their traffic diverted.

Senator KEAN. Does it not come down to this, that some road is trying to cheat another on the use of its cars?

Mr. ROBINSON. Not only that, but it is trying to get, as the professor said yesterday morning, traffic that does not belong to it.

Senator KEAN. The public has not suffered from this, has it?

Mr. ROBINSON. Except people who are competing for this line of business.

The CHAIRMAN. Now, it occurs to me that this very course you suggest is covered by law now. What law could we pass that is stronger than the one we have to prevent this discrimination?

Mr. ROBINSON. Possibly, Mr. Chairman—of course it is not my province to suggest to you, except by your permission, anything—but possibly authorizing the Commission to employ secret-service men; I do not know how else you will get it.

The CHAIRMAN. The Commission knows it already, and you know it. It is a matter of public notoriety. Why do not the Commission know it?

Mr. ROBINSON. I doubt if the Commission knows it; I doubt if it is a matter of public notoriety.

The CHAIRMAN. It is not very far from here to where the Commission lives, right down here on the avenue.

Senator DOLLIVER. What is the rate from these Mississippi points to Cleveland?

Mr. ROBINSON. Thirty-one cents.

Senator DOLLIVER. That passes through Cincinnati?

Mr. ROBINSON. Cincinnati, Louisville, or the Evansville gateway. That is the natural route.

Senator DOLLIVER. What is the rate these people get who take it around by St. Louis?

Mr. ROBINSON. By billing it to Jewett, you mean?

Senator DOLLIVER. Yes.

Mr. ROBINSON. Ostensibly they get 24 cents to Jewett. That is, the roads south of the river get 18 cents and the roads north of the river running into Jewett get 6 cents.

Senator DOLLIVER. It is four or five hundred miles from Cleveland?

Mr. ROBINSON. Yes; it is rebilled from Jewett and the consignee's name is changed, and the destination is changed.

Senator DOLLIVER. What do they charge for that haul?

Mr. ROBINSON. Eighteen cents.

Senator DOLLIVER. And the two together make how much?

Mr. ROBINSON. Twelve cents—I would say 18 cents up to St. Louis and 12 cents beyond, making 30 cents, as against 51 cents, the straight rate.

The CHAIRMAN. They do all that for this 1 cent, and run the risk of being prosecuted also.

Mr. ROBINSON. Yes; they do that.

The CHAIRMAN. Well, I have no more questions.

Senator KEAN. The fact is that this Commission, as I understand it, are so well informed that you desire to have them given additional powers to correct all these different evils?

Mr. ROBINSON. I do not quite understand you.

Senator KEAN. You want to give to the Interstate Commerce Commission additional powers to correct these evils.

Mr. ROBINSON. Yes; I think it would be wise to enlarge their powers to a certain extent.

Senator KEAN. Do you think that would correct them all?

Mr. ROBINSON. It would have a tendency to. I hardly think it would correct them all. We have not reached the millenium.

Senator CULLOM. You are undertaking to show that there are rebates and unjust discriminations by what you have said, are you not?

Mr. ROBINSON. It is really not in the accepted sense a rebate, but in the end it amounts to that.

Senator CULLOM. Well, directly you say their practices result in discrimination at least between shippers?

Mr. ROBINSON. Yes.

Senator CULLOM. And what you have said in your statement you think shows that?

Mr. ROBINSON. Yes; that is my information.

Senator CULLOM. And you think that the Commission ought to not only be continued, but in increased powers, powers to make rates. Is that what I understand you mean to say to the committee?

Mr. ROBINSON. Powers to not originate the rates, but to supervise the rates and to name a fair rate in case a certain given rate is condemned.

Senator CULLOM. You want to be understood as favoring that line of legislation?

Mr. ROBINSON. Yes, unquestionably.

Senator FORAKER. I understood you to say that as a preliminary proposition every port and every community should stand on its own bottom and have the benefit of its own natural advantages.

Mr. ROBINSON. Natural and acquired advantages; yes, sir.

Senator FORAKER. And not be helped by the making of rates or in any other way?

Mr. ROBINSON. Yes.

Senator FORAKER. You live at New Orleans?

Mr. ROBINSON. Yes.

Senator FORAKER. Well, New Orleans, you tell us, has so many feet of water and has very great natural advantages. Are they not all due, the advantages you have mentioned, to what the Government has done in building up that port?

Mr. ROBINSON. In a measure they are; yes, sir.

Senator FORAKER. Yes; we have spent a good many millions of dollars there on the Eads jetties and in improving the Mississippi.

Mr. ROBINSON. Yes, as well as a few millions at Cleveland.

Senator FORAKER. Certainly, all over the country. We have been spending many hundreds of millions of dollars to improve all these ports and harbors and points in order that we may develop our commerce at these different places. New Orleans has had a pretty full share in all that, has she not?

Mr. ROBINSON. I would not like to say that.

Senator FORAKER. And you think you ought to have something more as well?

Mr. ROBINSON. I think we have to keep the river open.

Senator FORAKER. I only wanted to call your attention to it.

Mr. ROBINSON. The answer to that, it seems to me, is that now you have given us those advantages, do not allow that good cow to kick the bucket of milk over. You have given us the milk; do not let the cow kick it over.

Senator FORAKER. Is it not true that the railroads are giving you some additional advantages beyond what I referred to in allowing you preferential rates leading into New Orleans from the North and West?

Mr. ROBINSON. The railroads leading into New Orleans from the North and West are making what might be called a gallant fight for what they deem to be their rights in the natural advantages possessed by the port into which they run. Now, the effort of the eastern trunk

lines is to divert that traffic equidistant to the eastern ports across mountain ranges; in other words, to attempt to reverse the natural advantages, and in their greed taking such a large measure of it that they can not possibly handle it when they get it up there, causing blockades.

Senator FORAKER. Do you know how much the preferential to New Orleans is as compared with New York?

Mr. ROBINSON. My understanding is that there is no preferential now. It is a free fight for all. Of course you understand I do not know and am not positive about that.

Senator FORAKER. Then, you would be somewhat surprised to learn, if you were of that impression, that there is a preferential now made as against New York in favor of New Orleans of about 6 or 6½ cents.

Mr. ROBINSON. By whom?

Senator FORAKER. By the railroads; to overcome the natural disadvantage New Orleans is subjected to on account of having to have a longer ocean transportation, etc.

Mr. ROBINSON. Then, may I ask what is the cause of the recent fight of newspaper notoriety between the trunk lines leading into New Orleans and the eastern trunk lines?

Senator FORAKER. I do not know that I can tell you all about it. We are trying to find out what you know.

Senator CULLOM. You are a shipper of fine lumber?

Mr. ROBINSON. Yes; a manufacturer and a shipper.

Senator FORAKER. I am not sure that that preferential is 6½ cents. It was stated by a witness on the stand a few days ago that it was 6½ cents.

Mr. ROBINSON. Without knowing anything about it, I feel quite sure that is a mistake.

Senator FORAKER. The preferential in favor of Baltimore is 3 cents as against New York, and in favor of New Orleans it is still larger.

Senator KEAN. I have a mill in western Alabama, one at Selma, a mill on the Northeastern road, near McNeal, and a mill on the Northeastern road at Pine Grove, and a mill on the Gulf and Ship Island road, at a little switch called Harmon.

Senator DOLLIVER. I have become interested in this Cleveland business that you have referred to. How could the Interstate Commerce Commission, supposing it had all the powers that anybody has ever asked for, settle that question? Do you regard the rate from the Mississippi shipping points to Cleveland of 31 cents as unjust and unreasonable?

Mr. ROBINSON. The question you ask is divisible under two heads. First, waiving the question of whether the rate in itself to Cleveland is unreasonable or not, because that has nothing to do with the principle, if you will pardon me, I hardly know what phrase to use, but I think Professor Ripley said yesterday it was stealing traffic.

Senator DOLLIVER. I am getting at what the practical remedy for it is. You give the Interstate Commerce Commission power to fix rates, and what would you expect them to do in that case?

Mr. ROBINSON. Well, of course, as I say, my province is not to make the law, but if I were handling it as a business matter of my own, I should certainly employ a few detectives.

Senator DOLLIVER. You do not get my question. The facts are un-

disputed. By the direct route the rate is 31 cents, and by this circuitous route it is 30 cents.

Mr. ROBINSON. Yes; by subterfuge.

Senator DOLLIVER. What action would you expect as a lumberman down there that the Interstate Commerce Commission ought to take in order to settle that situation?

Mr. ROBINSON. The only suggestion I should make would be to either allow them such supervision of the movement of traffic as to enable them to discover this stealing movement——

Senator DOLLIVER. I know; but nobody has ever proposed that they shall order a railroad to get out of a territory and quit trying to get business in that territory. Nobody has ever gone to that extreme.

Mr. ROBINSON. Well, Senator, of course there is a very delicate point of law in there; my attorney advised me that such practice, in his judgment, was in direct opposition to the antitrust law, and I better let it alone.

Senator DOLLIVER. If the railroad hauls this lumber up past St. Louis and then across the country to Cleveland, if it is entitled to try to get that business, it certainly would be entitled to be paid for it.

Mr. ROBINSON. Certainly.

Senator DOLLIVER. And it would be a very interesting question whether a preferential of 1 cent in that would for that long route be regarded by anybody as unreasonable and unjust.

Mr. ROBINSON. If they would give it to me and give it to me openly, I would not consider it unjust or unreasonable probably, but certainly it to that extent eliminates competition and fair dealing between the railroads and shippers.

Senator DOLLIVER. It seems to me it introduces an element of competition. If there are roads that are willing by some scheme or other to carry that lumber out of Mississippi up past St. Louis and then over to Cleveland, it introduces an element of competition.

Mr. ROBINSON. Yes; but as the explanation suggested by Professor Ripley, the only natural result is that these lines will go into the territory of this other road and haul stuff back, and that ought not to be so.

Senator DOLLIVER. Nobody has appeared here and nobody seems to suggest anywhere that the Commission shall be clothed with power to make an order stating that certain roads shall have access to a certain territory.

Mr. ROBINSON. Professor Ripley suggested that.

Senator DOLLIVER. I know; but that would be a wild scheme to undertake to territorialize this traffic and say to one road you shall have so much, and to another so much. Nobody proposes to do any such thing as that, and if the Interstate Commerce Commission is to operate in that way, they would have to make some kind of an order, and what would they make?

Mr. ROBINSON. If the rates were based on the principle of allowing the roads to make a fair return on the worth of their properties and not the cost, this indirect and roundabout shipment would be gotten rid of.

Senator DOLLIVER. No; I think that is worth all you get out of it, from what you say, unless the other rate is grossly unreasonable.

Mr. ROBINSON. To illustrate what I mean by the gateway system,

all rates on lumber in the Central Traffic Association are based on the rate to Cairo, which is 16 cents. Now, the other gateways on the Ohio River above Cairo are Evansville, Louisville, and Cincinnati, but no rates are based on those gateways. All rates are figured out on the Cairo rate. Now, by taking Cairo there are quite a number of points to which it is possible to ship lumber where the combination of the two localities is less than the direct rates. This trouble might be obviated by making Cincinnati a gateway and giving them a flat rate like they do to Cairo.

Senator DOLLIVER. Now, there have appeared here in these lumber complaints the names of certain associations of lumber producers down there. What is the character of those associations?

Mr. ROBINSON. They vary. The object of the particular association that I belong to is to secure or endeavor to secure equality of rates and lower rates on lumber.

Senator DOLLIVER. The census of 1900 seems to locate a lumber trust down there in that territory, I think called the Yellow-Pine Association, being the only lumber trust that is identified with the census. Is this lumber business organized into a trust down in that country?

Mr. ROBINSON. Of course I can not answer what you want to know. The association to which you refer is known as the Southern Lumber Manufacturers' Association. To that association I neither belong nor do I give my allegiance.

Senator DOLLIVER. What is the Yellow Pine?

Mr. ROBINSON. Whether they are or are not a trust I do not know.

Senator DOLLIVER. What is the Yellow Pine Company in Georgia?

Mr. ROBINSON. I think you refer to the Georgia Sawmill Association.

Senator DOLLIVER. No; I refer to the institution which is described as a trust in the census of 1900 in the lumber report.

Mr. ROBINSON. I do not know of any association in Georgia other than the Georgia Sawmill Association.

Senator DOLLIVER. Is that a single corporation?

Mr. ROBINSON. It is an association of sawmill men.

Senator DOLLIVER. Is it incorporated?

Mr. ROBINSON. I really do not know. I think so, though.

Senator DOLLIVER. And these lumber associations in Arkansas and Mississippi are simply business associations of separate and independent corporations?

Mr. ROBINSON. Yes.

Senator DOLLIVER. That is what I wanted to get at.

Mr. ROBINSON. The Georgia Sawmill Association and the Central Yellow-Pine Association have no connection whatever. Their circumstances and wants and needs are dissimilar. These local associations are not connected with either.

The CHAIRMAN. The case you make is that the railroads haul a longer distance for 30 cents than they haul a shorter distance for 31.

Mr. ROBINSON. That is one point in it.

The CHAIRMAN. Is there any complaint in that? If a man gets that 30-cent rate he does not complain, and if he wants to go the other way why does not he do it?

Mr. ROBINSON. I am unfortunate in not making myself clear on

that point. The wrong is to the general public first, that there is this secret arrangement made between these roads that want to buy the traffic and certain other parties. These roads know very well that the trunk lines from the south of the river would not permit what they are doing, so therefore they must use this secret method of accomplishing their end.

The CHAIRMAN. That is all.

STATEMENT OF MR. J. A. BARRET.

The CHAIRMAN. State your name, residence, and occupation.

Mr. BARRET. J. A. Barret, Van Buren, Ark. I am secretary of the Van Buren Horticultural Association.

The CHAIRMAN. Make any statement you wish.

Mr. BARRET. I represent a combination of small growers under the name of the Van Buren Horticultural Association. I am their financial agent and dispose of their fruits and berries as they grow them and they are loaded in the cars, and I dispose of the cars. I have had this position since 1900, and prior to that time I was connected with the association, but not in the present position. We have at our shipping point three different car lines, the Armour Line, the Wells, Fargo & Co. Line, and the A. R. T. Car Line. The A. R. T. Car Line is owner and operated over the Gould system or the Iron Mountain tracks, and the Wells-Fargo Express Line is operated over the Frisco, the same as the Armour Line. The Armour Line is operated over the same tracks. Since the advent of the Armour Line in our territory about six or seven years ago we have had most excellent service. Now, I am not in a position to say that it is due entirely to the Armour Car Line Company, but our service has been most excellent. Prior to that time we had cars whose icing capacity was not more than 3 or 3½ tons. We had also the C. F. T. Car Line overhead icer, which had ample capacity to refrigerate the stuff. The companies charge the same rate with the exception of the Wells-Fargo Company. Their rate is $1.50 a hundred, freight rate, and $30 icing charge. The other car lines charge $1.07 to Minneapolis.

We will take Minneapolis as one of our chief markets, together with St. Paul. In regard to claims, we find this condition existing: If we have a claim against the A. R. T. Car Line, which is the Gould railroad system, we can hardly ever get the claim through or adjusted, but with the Armour Line people and the Frisco people we find that if it is the fault of the railroad company the Armour people see that is is paid. To illustrate more clearly: I had a claim against the Frisco Railway Company for $151 for peaches that were held out on a washout and upon their arrival were found to be damaged. We put in a claim, and Mr. Summers at that time, who was acting as the division freight agent for the Armour Line, told me that if it was the fault of his people I would have a voucher for it within thirty days, and if it was the fault of the Frisco Company that he would see that they paid it immediately, and we did get our claim within thirty days. Now we have a claim against the A. R. T. Company, or against the railroad company, for something like $250 or $300. In shoving the car into the icing station the switch engine knocked the braces out of it. It was only braced temporarily and the peaches were scattered all over the car and they

had to be picked up and the crates mended and repacked. The man to whom I had sold the car for 85 and 90 cents refused to take it. The agent suggested that I dispose of the car and said he would try to get the matter adjusted. I shipped the car to Stacey & Sons at Mason City, Iowa, and received only $165 for the car, and put in a claim against the railroad for that amount.

I have been informed by the officials of the railroad that they say that the A. R. T. Car Line were at fault, and the A. R. T. Line people claim that the railroad company was at fault. The consequence is we are out our money and will likely have to bring a lawsuit against them to get what is justly ours. But we have no trouble with the Frisco or Armour Line about claims for damages. The end of the division is at our town—that is, of the Gould tracks—and the superintendent of that division and the minor officials reside there. Of course many of them are my personal friends, and I am rather inclined to patronize the Gould system and the A. R. T. Company. This year I informed Mr. Rice, one of the superintendents of the A. R. T. Line, that I would try and give them at least 50 per cent of our business. I failed to do that, because when I sold these cars—and we sell most of our fruit on the track there—the commission merchants generally preferred the Armour service, and I had to dispense with the use of the A. R. T. Line. In my own judgment I think that the series nine and ten thousand of the A. R. T. Line is equal to any other refrigerator car in the service, but at the same time the trade generally prefers the Armour people.

Senator KEAN. Is that all you have to say?

Mr. BARRET. Yes.

Senator KEAN. You say that the Wells-Fargo Company publish their rate?

Mr. BARRET. Yes.

Senator KEAN. Do the other companies publish their rate?

Mr. BARRET. Yes.

Senator KEAN. What is the rate of the other company?

Mr. BARRET. Thirteen cents a crate to Minneapolis.

Senator KEAN. They charge you 13 cents a crate for icing?

Mr. BARRET. Yes; with a minimum of 510 crates. We originally had a minimum of 600 crates. We asked them to reduce their rates, and instead of reducing their rates they reduced the minimum. The railway companies and the car lines, I presume, did this jointly.

Senator KEAN. Then, the way they charge for icing in your region is so much per crate?

Mr. BARRET. Yes.

Senator KEAN. And what does the A. R. T. Company charge?

Mr. BARRET. The same as the Armour people.

Senator KEAN. And the Wells-Fargo Company charge by the carload?

Mr. BARRET. Yes.

Senator KEAN. How many crates are there ordinarily in a car?

Mr. BARRET. Five hundred and ten is the minimum, 17,000 pounds. But the Wells-Fargo Company haul nothing less than 600. That is their minimum. Of course, if we load them for less than 600, we have to pay for a full carload.

Senator KEAN. You prefer the Armour icing to any others?

Mr. BARRET. I would just as soon have the A. R. T.; but the trade, the people who buy our berries, prefer the Armour service.

The CHAIRMAN. That is all.

STATEMENT OF MR. F. B. THURBER.

The CHAIRMAN. State your name, place of residence, and your business.

Mr. THURBER. F. B. Thurber. I am president of the United States Export Association, and my office is at 90 West Broadway, New York. I may state as to the interests I represent that some of the lines of business represented in the membership of the United States Export Association are as follows:

Machinery.—Oil-well machinery, woodworking machinery, machine tools, electric motors, locomotives, contractor's machinery.

Manufactures.—Rubber goods, emery wheels, radiators, sewing machines, steam drills, typewriters, phonographs, chemicals, window glass, time registers, wood screws, graphite, furniture, desks, lumber, leather, sewing silk.

Food products.—Various lines.

Dry goods.—Various lines.

Hardware.—Various lines.

I represent directly merchants and manufacturers who are members of the United States Export Association and indirectly many other shippers in the United States who, while opposed to unjust discriminations by railroads, are not prepared to adopt the remedy proposed by the advocates of the Esch-Townsend bill passed by the House of Representatives at the last session of Congress. Indeed, I doubt if 10 per cent of its friends have given any serious thought as to whether there is any better way to remedy the evils which exist. They have simply followed the lead of Mr. Bacon, an earnest, honest man, who, having a difference of opinion with certain railroads, has embarked on a "Peter the Hermit" crusade against all railroads, and his followers have adopted his cure-all for a very complicated disease. This cure-all is to confer rate-making powers on the Interstate Commerce Commission, when there is little or no complaint as to rates being too high, but that sometimes they unjustly discriminate between persons and between places.

There is a broad distinction between rate making and unjust discriminations. To remedy the latter it is not necessary to confer rate-making powers directly or indirectly upon the Interstate Commerce Commission, and I believe it would be against the public interest to do so. It sounds plausible to say that when, after investigation, the Interstate Commerce Commission finds a rate to be unreasonable it should be empowered to say what rate is reasonable and that said rate shall be operative until enjoined by the courts. The apparent reasonableness of this caught the ear of our President, and with his favor the House of Representatives jammed through a measure which if it had become a law would have injured all of the material interests in the United States. The wages of a million railroad employees, representing directly 5,000,000 consumers and indirectly many other millions engaged in collateral industries depending on the prosperity of our railroads, are at stake. The value of ten thousand million dollars of securities, largely held by our savings banks and life insurance companies, are at stake.

The trouble is that most rates are basic and a change in one affects a thousand or a million rates. The same is true of a proposition advanced by Mr. Gardner, of the New York Board of Trade and Transportation—that if one line makes a cut rate in any instance, it shall be the legal rate to all shippers on that line. A mistake or disregard of instructions by a contracting agent of one line might involve the rates of many other lines, and when we reflect the margin between profit and loss is less than one-tenth of a cent for carrying a ton of freight 1 mile on our railways, we can appreciate the delicacy of the problem. The breaking of a hair in a violin bow makes all the difference between harmony and discord, and the adjustment of railroad rates is akin to this.

For thirty years I have been a student of the transportation question from a shipper's point of view, and an advocate of reasonable control of railways. I think I may say without egotism that I had more to do with creating a railroad commission, and defining its powers, in New York State than any other man; and with the exception of Hon. John H. Reagan I had as much to do as any man with creating the sentiment which resulted in establishing the Interstate Commerce Commission. Both of these laws were founded on the Massachusetts railway-commission law, which confers full powers of investigation upon the commission, with power to appeal to the courts, or to the legislature, to enjoin abuses and to fix rates; and in both Massachusetts and New York this has been found sufficient to protect the public interests—better, indeed, than in those States which conferred rate-making powers upon their railroad commissioners. This is illustrated by the following article from the Railroad Gazette of December 30, 1904:

ARE RATE-MAKING COMMISSIONS SUCCESSFUL?

"It is an interesting phenomenon, in connection with the agitation for the enlargement of the powers of the Interstate Commerce Commission, that so much effort is expended in the exploitation of the evils alleged to exist that none is available to show the applicability of the proposed remedies. Without for a moment admitting that the frictional evils incident to the mutual adjustments necessary between a rapidly developing transportation system and an industrial organization, of which the former is a part, which is moving forward with equal speed, are as great as the proponents of the Quarles-Cooper bill contend, it is worth while to ask whether, if they were, the remedy proposed would correct them. Thirty States of the American Union now have railroad commissions, and in 22 instances these commissions have rate-making powers. Would it not be reasonable to investigate the results in these States before adopting similar legislation concerning interstate commerce? Such data as are now available indicate that official rate making has not been very satisfactory to those States which have tried it. Georgia, for example, was one of the earliest States to adopt a drastic railroad-commission law, and has consistently followed the plan of interposing its authority between the buyers and sellers of railroad transportation. Yet the newspapers of Georgia to-day declare that the shippers of that State pay more than their neighbors in adjoining States, and that interstate traffic, which the Interstate Commerce

Commission so loudly complains is not subject to effective regulation, is carried similar distances at much lower rates. A recent editorial in the Atlanta Journal contains the following:

"'A merchant in Marietta can ship certain goods to Chattanooga for 15 cents per hundred; to Knoxville for 19 cents per hundred. To ship the same goods to Atlanta he must pay 30 cents per hundred; to Macon, 70 cents per hundred. Atlanta is 20 miles from Marietta, Chattanooga is 128 miles; and yet the Chattanooga merchant pays just one-half the freight the Atlanta merchant does. Why? Because Chattanooga is out of the State and Atlanta is in it. This is merely one of a hundred instances where Georgia points are placed at a positive disadvantage in freight rates because they are located in the State.'

"The editorial from which the foregoing is an extract shows traces of feeling which suggest the attitude of an advocate rather than one of judicial impartiality; but in spite of this it is clear that the results of a drastic regulative system are not now wholly satisfying to the people of Georgia. It has been suggested that the psychological aspect of railroad regulation of this sort is too often ignored, and that where the reduction of rates is more or less vigorously looked after by public authorities railroad officers are not unlikely to leave the duty of looking for desirable reductions wholly to the body with which the legislature has required them to share it. Something of this sort seems to have occurred to the shippers of Georgia, for in the editorial already quoted there appears the following explanation of the situation against which the complaint is made:

"'* * * When a merchant approaches the railroad for rates in Georgia he is met with the reply that the railroad commission regulates that, and he can get no reduction.

"'If, however, they are asked for rates to towns outside of Georgia, the application receives immediate and favorable consideration and the best rates are granted, because the point of destination is beyond the limits of the State and therefore not controlled by the State commission.'

"In another paragraph of the same editorial the situation is summarized with similar effect, and perhaps even more forcibly, as follows:

"'As matters now stand, the plain logic of the situation is that within the State of Georgia, rates being regulated by the railroad commission, shippers are powerless to receive fair treatment from the railroads, while to points just beyond the limits of the State they can receive the most favorable rates, and shippers from these points into the State receive the lowest rate that can be obtained; much lower, as a rule, than the Georgia shipper can get.'

"Anyone would underestimate the significance of the foregoing who failed to note that the State rates and the interstate rates are over the same railroads and must be promulgated by the same officers, the controlling and, in fact, the sole difference being that in the case of the interstate rates the shippers deal at first hand and face to face with the railroads and their officers, while in the case of the State rates the legislature has interposed its authority and that of the State commission between the two actual parties to every contract for railroad service, thus requiring the negotiations to be conducted at much

more than an arm's length. The method of doing business thus imposed upon the shippers of State traffic and the railroads carrying it is cumbersome and absurd; it is only natural that its consequences should be so burdensome.

"If rate-making power is conceded to the Interstate Commerce Commission, the shippers of interstate freight may find themselves in the situation that is now distressing the local shippers of Georgia. Left to himself, the competent railroad rate-making officer devotes much time and thought to the search for opportunities to assist in the development of the regions contiguous and tributary to this system and to increase net revenue by reducing rates. In order to avoid overlooking any such opportunity his door is always open to those who seek reductions, and he investigates patiently every industrial situation that affords even the most meager promise of additional traffic in return for lower rates. The creation of an official board with authority to compel reductions transforms such an enlightened and useful officer into an advocate of the existing rates. He is told, in effect, that the State will look out for the needs of business in the way of reduced rates of transportation, and he knows that, until driven to plead confiscatory taking of property without due process of law at the bar of justice, the revenues of his corporation will have no defender but himself and his fellow-officers. He knows that a justifiable reduction will be made an argument for others that are wholly devoid of justification, and he naturally assumes an attitude of hostility to all reductions. Again, capital is reluctant to engage in railroad enterprises where the rate-making power has been taken from its employees and lodged in political officers, and the States which have the most drastic regulative laws have usually seen the slowest development of railroad facilities, with the natural accompaniment of slow development, the retardation of the natural decline in rates."

From my own knowledge I can testify that it was not intended to confer rate-making powers upon the Interstate Commerce Commission. This is proven by the following extracts from the debates in Congress when the bill was pending:

In the House of Representatives, on December 8, 1884, Mr. Findlay said:

"It is perfectly legitimate to prescribe that a rate shall be reasonable and then leave it to the courts to determine what is and what is not reasonable; but to declare in advance, not merely the principle by which the fixing of the rate shall be governed, but to prescribe the rate itself by referring it to a fixed standard, and apply the rule to the complicated system of interstate transportation, with all of its vast ramifications and subtle competitions, is the exercise of power which, if it be held legislative in its nature, certainly ought to be sparingly and cautiously used. The bill of the committee keeps this distinction full in view in all of its provisions, and is consistent and symmetrical throughout; but the Reagan substitute, as I have shown, is not only not distinguished by this unity and integrity of purpose, but is complex and contradictory in some of its essential features."

Mr. REAGAN:

"But it would be understood from this reasoning that my bill not only requires rates to be reasonable, but fixes the rates. There is not a word in the bill having that effect."

On January 7 Mr. Reagan said:

"One of the greatest troubles I have had, even with the friends of legislation in this direction, has been to get them to understand that this is not a bill to regulate freight rates; that it does not undertake to prescribe rates for the transportation of freight. I know the difficulties which would attend any measure attempting to prescribe rates of freight. I am persuaded that no law fixing rates of freight could be made to work with justice either to the railroads or to the public, and I have intended from the beginning to avoid that difficulty.

"The difficulty with gentlemen in considering the bill is that they can not keep out of their minds the arguments of the railroad lawyers and lobbyists who are continually harping upon it, that this bill establishes arbitrary rates of freight. It does no such thing. It carefully guards against that, simply intending to prevent the most manifest abuse against the public and control the monopoly powers of these corporations."

In the Senate, May 6, 1886, Mr. Kenna said:

"What constitutes a reasonable rate is precisely the thing which the people of this country are unwilling to leave to the arbitrary discretion of the railroad commission."

Judge Cooley, its first chairman, recognized this, but after his retirement the Commission assumed that it had this power, and exercised it until the Supreme Court of the United States decided that it had not, since which time the radical element in the Commission has been seeking to get this power, and has invoked the influence of the radical element among shippers to induce Congress to confer it. The state of mind of this element is illustrated by the fact that at the interstate-commerce law meeting held at St. Louis October 27, 1904, it was stated that the railroads owned the Congress of the United States; and no longer ago than December 30, 1904, Mr. Prouty, of the Interstate Commerce Commission, in an interview published in Chicago, is reported to have said that "if the Commission was worth buying, the railroads would own it." The reasonable element among shippers does not believe this, but they are less demonstrative than the radical element, and do not make themselves heard. Their view is well expressed by resolutions adopted by the New York Board of Trade and Transportation concerning the "Cooper-Quarles" bill which was the foundation of the "Esch-Townsend" bill, as follows:

"*Resolved*, That to invest the Interstate Commerce Commission with power to declare 'what rate or rates' are 'unjustly discriminative or unreasonable,' and 'what rates would be just and reasonable,' and to further provide that the rates which the Commission deem just and reasonable 'shall be substituted,' is, in our judgment, a long step toward conferring the general rate-making power upon the Commission, if, indeed, the provisions of the Quarles-Cooper bill would not confer precisely that power. The advocates of that bill disavow any intent to confer such power, and do not defend the conferring of such power. The Commission has heretofore claimed the rate-making power and has endeavored to exercise it in various decisions, which have been overruled by the courts. It seems to have been made clear that neither the framers of the act nor Congress intended to confer that power on the Interstate Commerce Commission. The

Quarles-Cooper bill confers that power to the extent of pronouncing rates and classifications to be unjust and unreasonable, and how far they are unjust, or the naming of a rate or practice in substitution. This confers a judicial power upon a constantly changing body appointed without special reference to that phase of their duties, and while the country has been fortunate thus far in the character of the men placed on the Commission, political and other considerations may have undue weight in the selection of commissioners, and the Commission would be more likely to be influenced by such considerations than the judiciary.

The Commission has full power of investigation, and can appeal to the courts to enforce its conclusions, and the courts have supported the findings of the Commission by injunction when the prohibition of unjust discriminations was concerned. This is the effective remedy that has been found to exist under the present law.

"We believe, therefore, that the decisions of the Interstate Commerce Commission should be and can be enforced when made upon complaint of unjust discrimination, but we are not prepared to commend a measure which gives the Interstate Commerce Commission a power so general. It seems to us wiser, for the present, at least, to rely upon the recently applied method of enforcing the decisions of the Commission by injunction than to enact the Quarles-Cooper bill, the provisions of which may be construed to be much more far-reaching than even its advocates are willing to defend or consent to.

"*Resolved*, That this board earnestly advocates legislation by Congress to amend the interstate-commerce law so as to permit pooling by railroads under the supervision and control of the Interstate Commerce Commission, to the end that unjust discrimination may be prevented and reasonable, uniform, and stable rates be established."

This view is further emphasized by the following resolution, adopted by the directors of the United States Export Association January 3, 1905:

"*Resolved*, That in the opinion of this association the bill now pending in Congress, known as the "Cooper-Quarles bill," conferring in some degree rate-making powers upon the Interstate Commerce Commission and making its findings operative until reversed by the courts is a step in the wrong direction; that while the Interstate Commerce Commission performs a useful function in investigating and making recommendations, it should not have powers equivalent to prosecutor, judge, and jury combined; that to make its findings operative until reversed by the courts is like hanging a man and trying him afterwards, for rates are so related that one affects a thousand or a million, and a damage thus done can not be estimated or repaired.

"*Resolved*, That this association is opposed to unjust discrimination in any form in the operation of our public highways, but a reasonable elasticity in their operation is necessary, in order to market our surplus products abroad, and that to deny this would operate to the detriment of our producers, manufacturers, laborers, and the general public.

"*Resolved*, That the courts are the best judges of what constitutes 'a square deal,' and if there are not now enough to give prompt decisions more should be established to that end."

Mr. Chairman and gentlemen of your committee, there are a few great facts that are not generally recognized. Among them are:

1. That all combinations and consolidations of transportation lines in this country have resulted in better service and lower rates. This is illustrated by the following figures of the United States Bureau of Statistics:

Average receipts per ton-mile of leading railroads in 1870, 1880, 1890, and 1908, inclusive.

Railway lines.	1870.	1880.	1890.	1908.
Lines east of Chicago	1.61	0.87	0.68	0.67
West and northwest lines	2.61	1.44	1.00	.85
Southwestern lines	2.95	1.65	1.11	.98
Southern lines	2.39	1.16	.80	.68
Transcontinental lines	4.50	2.21	1.50	.98
Average	1.99	1.17	.91	.74

This result has been attained largely through combinations and consolidations, which, contrary to the impression generally entertained, have not resulted in abolishing competition, but rather in economies of operation and improvement in service, accompanied by a steady reduction in rates, with but few exceptions, which prove the rule. During the past three years rates have slightly advanced owing to a much greater advance in labor and materials. Railway freight rates in the United States are, however, less than one-half those of other principal countries. Our railways carry our chief products 1,000 miles to our seaboard for less than the railroads of other countries charge for carrying these products 200 miles inland from the seacoast after they have crossed the ocean.

3. That this great result has been attained by free and unhampered American railroad men, who have induced investors to put $10,000,000,000 into making this possible. It has merged the fertile furrow of the prairie farm in the closing furrow of the sea, and made myriad acres valuable which otherwise would be valueless. It has made us the leading nation of the world. Are the men who have done this less entitled to reward than those who invested in the land and waited for "the unearned increment?" It isn't what you have got, but where you have got it, that constitutes value, and this applies alike to fields, forests, mines, and factories.

Every private car line which gives its owners an advantage over the average shipper should be absorbed by the railroads, just as the privately owned fast freight lines were absorbed.

Every terminal railroad which gives its owners a like advantage should be thus absorbed.

If all the railroads in the United States were consolidated into one great system, under corporate management, it would be to the public advantage, just as previous consolidations have been. It would not abrogate competition, for the great competition is that of sections, States, and nations. If a manufacturer in one State wants to bid on a contract in another State, where a low commodity rate would get the business and keep his works running, and a railroad has empty cars going that way, it should be allowed to make a special rate, provided that rate is open to all manufacturers on equal terms. If an exporter can sell a cargo of wheat in Europe in competition with Argentina; if he can get a special rate at a minute's notice, and the railroad can make the deal possible, it should be allowed to do so.

It is this freedom which has reduced our rates in this country to one-half those of other countries, and we should not put our railroads in official clamps which would prevent this.

There is a broad distinction, however, between rate making and preventing unjust discriminations. We need the Interstate Commerce Commission to police the latter, but it should not be the judge of the former.

Nearly all communities and nearly all shippers think that they are at a disadvantage as compared with some other community or shipper, and, firm in this belief, are willing to play into the hand of a Government bureau asking arbitrary powers. Dealers in each commodity think other commodities are unduly favored. Atlantic ports think that Gulf ports are given an undue advantage, and Gulf ports that the Pacific coast is unduly favored. But, in its larger analysis, it is nation against nation, and we should all work for the United States. The average student of this great question forgets that hundreds of skilled railroad men, who have devoted their lives to this business, are constantly at work striving to adjust rates fairly, so that all shippers, all sections, and all commodities, shall, as nearly as possible, be upon an equal basis. They forget that when the price of labor, coal, lumber, steel, and other main items of cost to railroads advance in price that railroads must advance their prices for transportation, the same as manufacturers and merchants must advance their prices when the cost of labor or materials advances. They forget the great central fact that rates for railroad

transportation in this country are, upon an average, less than one-half those of other principal countries, and that we are largely indebted to this for the great extension of our foreign trade. As regards the advances in railroad rates during the last three years, they are less than the advances in all labor and materials used by the railroads, and less than the advances in most farm and other products. This is illustrated by the statistics of the United States Department of Commerce and Labor, which show that while the price of all commodities advanced, from 1899 to 1903, 11 per cent, that the price of transportation during the same period advanced less than 4 per cent; while from 1890 to 1899 they progressively declined more than 22 per cent. In view of these facts and such results as have been attained only in the United States under elastic railroad management, I believe we should go slow in enacting cast-iron laws conferring arbitrary powers upon public officials who have not made a life-long study of railroad rate making, which is one of the most intricate of problems. The Elkins bill, passed by the last Congress, amending the interstate-commerce law, strengthens the hands of the Interstate Commerce Commission, and with the power of injunction against unjust discriminations, which the courts have always been willing to grant, but which the Commission has only recently availed itself of, the worst discriminations can be promptly remedied.

As a preventive measure, however, reasonable agreements between carriers should be legalized, and some such amendment to the interstate-commerce and the Sherman antitrust laws as that introduced by Senator Foraker, of Ohio, in the last Congress should be made. I therefore offer for the consideration of this committee the following preamble and resolution, adopted by the directors of the United States Export Association October 15, 1904:

"Whereas the Supreme Court of the United States has held in the Trans-Missouri and Joint Traffic Association Cases that the Sherman antitrust act was applicable to railroads, and makes illegal agreements between carriers which are necessary for the maintenance of reasonable, stable, and nondiscriminative rates; and

"Whereas it is well known to all who were familiar with this legislation that Congress did not intend it to so apply, as is evidenced by the public declaration of the late Senator Hoar, chairman of the Judiciary Committee of the Senate, to this effect; and

"Whereas the effect of these decisions has been to increase unjust discriminations, which the interstate-commerce law was intended to prevent; and

"Whereas a bill has been introduced in Congress by Senator Foraker, of Ohio (Senate, No. 3937), to remedy this defect and revive the principle of the common law, which prohibits only that which is unreasonable, and making the courts the judges of this:

"*Resolved*, That this association approves of this bill or a similar one embodying this principle."

TO SUMMARIZE THE MAIN POINTS.

1. Prevent unjust discriminations, but do not interfere with the intricate subject of rate making.

2. Let the Interstate Commerce Commission be an investigating and prosecuting body, but leave it to legislatures and courts to *decide* what is reasonable. To make the findings of the Commission

operative before being so passed upon would do irreparable injury and be like hanging a man first and trying him afterwards. The advocates of the Esch-Townsend bill are either unable or unwilling to see that the changing of one rate affects a thousand or a million rates.

3. It is a physical impossibility for a commission of five or seven men, no matter how able, to do what 500 or 700 skilled traffic managers are trying to do—adjust the myriad conflicting interests of individual shippers, ports, and sections—"like the poor, they are always with us;" and while the Attorney-General has said that legislatures, State and National, have the power to regulate rates, until the Supreme Court of the United States has passed upon the constitutional question involved in interstate commerce, that no State shall discriminate against the ports and places of another State, we had better leave the adjustment of the intricate rate-making problem to practical traffic managers who have given the United States rates less than one-half those of other principal countries, enabling us to reach their markets, and have developed an internal commerce which commands the admiration of the world.

4. A word about "watered stock" is necessary. This is the great bogy of those who think that public service corporations should be put in official clamps, or that there should be public ownership. Professor Meyer, of the University of Chicago, said before your committee May 5 that "stock watering in many cases had been beneficent. It enabled the building of roads, and many of the great interests of the country had been started and built up by watered stock."

Judge Knapp, chairman of the Interstate Commerce Commission, said in a paper before the American Association for the Advancement of Science, Washington, D. C., December 30, 1902:

"If common assertion is well founded the body politic is afflicted with a grievous ailment which takes the name of "trusts." Those who diagnose this malady—and nearly everyone professes ability to do so—declare that one of its worst and most aggravated symptoms is overcapitalization, or 'watered stock.' For this and other manifestations of the disorder the favorite specific just now is publicity. By very many this is announced as a positive cure-all, while those who appear to have some question about its complete efficacy are, nevertheless, recommending its use as doubtless beneficial, and certainly harmless.

"With all deference to those who advocate such publicity as a preventive of stock watering, I venture to doubt the correctness of their contention. Indeed, my skepticism goes to the extent of questioning whether overcapitalization, as such, is a matter of real gravity, much less a portentous evil which demands an extraordinary remedy. I hold it unproved that the excessive issue of corporate securities is a source of such danger as to excite public alarm, and I am yet to be convinced that enforced publicity will not be a harmful exercise of public authority.

"Leaving out the speculator and taking into account only those seeking honest investment, ten times more money, to say the least, has been sunk in farm mortgages, suburban lots, patent rights, buying and selling grain, cotton, and other commodities where no corporate shares were dealt in or even existed than was ever lost on account of the fictitious or excessive issue of corporate securities. If

the State is to assume the function of keeping folly and cupidity from paying twice or ten times what a thing is worth, it surely should assume the guardianship of the largest numbers and the heaviest losers.

"To say that capitalization shall not be greater than the amount of cash actually paid in may, in rare instances, save the feeble-minded from losing their money, but it might also inflict much injury upon the general public by hampering the ambitious and placing a handicap upon legitimate enterprise. To say that shares may be issued only for cash, or for property at its fair value, introduces an alternative which throws the scheme into confusion and leaves it undefended at its weakest point. If the property to be capitalized is an undeveloped mine, for instance, or an invention like the telephone or wireless telegraphy, by what process will you determine its actual value, and who shall decide on the amount of stock to be issued? Even if the evil of watered stock is much greater than it appears to me, and however desirable it may be to prevent wrongdoing of this description, I see little good, even to the few foolish investors, in compelling corporate publicity as a remedy for overcapitalization."

The popular conception of the term "watered stock" is that it is a device to swindle somebody out of something, and in many instances it may be true, but in the great majority of instances it is, under corporate organization, putting into the form of shares of stock the "good will" of a business, something that every merchant charges for when he sells out a successful business. It may be in bonds or preferred stock or common stock, but it's there in some form. Suppose a newspaper, with a plant costing $100,000 and earning $100,000 a year, is put into a corporation with $1,000,000 capital. Some people would say that stock was grossly watered.

Suppose a man with exceptional energy and ability decides to build a railroad, invests his own money, and gets his friends to do likewise in an enterprise that is of great benefit to the public from the beginning, but requires some years for traffic to develop to a point where it will pay a profit, and if he makes a mistake in his calculations it may "go broke," be sold out, reorganized, and the original investors lose all they put in. If successful, are the original investors who took the risk to be limited to 6 per cent on the actual capital invested, or shall they be permitted to share (through the medium of so-called "watered stock") in the values that they have created?

Individual initiative and energy, as opposed to the socialistic idea, has been the mainspring of American commerce, and ultimate profit, embodied in the much-abused "watered stock," has been the main incentive. It is all summed up in the one great fact that the United States enjoys rates one-half those of other countries.

The opinion of the Attorney-General, as I understand it, leaves open the very important question of what is a direct and an indirect discrimination between ports. If indirect, Congress can regulate it or delegate the regulation to an executive body, but if direct, it would be unconstitutional. Has the question of what is direct and what is indirect ever been passed upon by the court of last resort? This question of railroad differentials between the Atlantic ports has been referred by consent to the arbitration of the Interstate Commerce Commission, but in case it is adverse to New York, which is

spending $90,000,000 to improve its canals, will New York relinquish its natural advantages?

The Attorney-General says Congress has power to fix a standard provided it is not confiscatory. Mr. Acworth has testified that the standard rate fixed by Parliament in England has tended to prevent reductions in rates, and that outside of purely local rates they are double or treble those prevailing here.

Mr. Bacon testified that a maximum rate based on mileage was unwise. What standard can be adopted that is wise, and who shall decide it—a political commission of five or seven lawyers or 500 or 700 skilled traffic managers in different parts of this great country who have devoted their lives to this business and with varying markets know at what rate the traffic will move? Shall we have cast-iron clamps or an elastic system for commerce?

I believe that the Esch-Townsend bill, which is really the bill of Mr. Bacon, of Milwaukee, and Mr. Prouty, of the Interstate Commerce Commission, if enacted in its present form, would be detrimental to the interest of the producers and shippers of the United States, and I therefore hope that if approved by your committee it will be with amendments which will meet the objections I have pointed out.

STATEMENT OF MR. MURRAY CARLETON.

The CHAIRMAN. Please state your name, place of residence, and business.

Mr. CARLETON. Murray Carleton. I reside at St. Louis, Mo., and am in the wholesale dry goods business.

The business men of St. Louis and the Southwest did not look deeply into the effect of the proposed freight-rate legislation until the action of the railroad commissioners in Texas and the passing of the maximum freight-rate bill by the Missouri legislature this spring began to disorder freight schedules. The Business Men's League of St. Louis and the commercial clubs of Kansas City and St. Joseph tried to defeat this legislation, but could not. Then the executive committee of the Business Men's League considered the Townsend bill now pending before you, and concluding that it was hurtful, referred the matter to a larger body, and a joint meeting was held of this executive committee, the committee on freight transportation, and the committee on national legislation. These committees instructed the president to appoint a committee to appear before you and protest against the bill. A meeting of the full membership of this body will take place later this month, which will undoubtedly send you the same message. I have the honor to represent also, in telling you that the business men of St. Louis and the Southwest do not want the radical disturbance of the freight rates of this country that will inevitably follow if the power to make freight rates is put into the hands of the Interstate Commerce Commission, the Interstate Merchants' Association of St. Louis and the Merchants' Transportation Association of St. Louis, both composed of large shippers, and I beg leave to offer the resolutions adopted by these organizations for filing with your committee.

But, Mr. Chairman, while I know that many people who have not studied the effect of the proposed law look on it as a panacea for

all ills, as a remedy for all grievances against freight-rate conditions, the shippers whom I represent not only know that it will not cure the evils which exist in the railway situation, but they are greatly and reasonably afraid that it will take away from them the profitable rate adjustments which have been built up slowly and carefully through many years of work; and while I do not represent the shippers of any other part of this country, I do believe that if they will calmly consider the confusion in their own territory which will result from the proposed law they will all come here before you asking you not to destroy existing business stability.

I shall only aim to consider this question from the standpoint of a merchant and large shipper of St. Louis. I consider this question solely from a business point of view, as it affects or may affect the business of my city and the territory in which St. Louis must find the field for the expansion of its varied commercial interests. Such expansion of our interests, I take it, will be of benefit to the people not only of St. Louis but of its tributary trade territory; and, furthermore, it seems a plain proposition that in legitimate business a profit to one section of the country is only gained by the exchange of a profit to other sections. All sections get from one another what they want, with a profit in the handling.

It is generally admitted that this country is in a prosperous condition. It is the general hope and wish that this prosperity shall continue. Prosperity such as we now enjoy can only be rendered permanent by the stability of laws which have to do with conditions of trade and finance and the continuous profitable employment of labor.

This question of the Government's further regulation and control of railroads, by enlarging the powers of the Interstate Commerce Commission and conferring upon that body the rate-making power, involves the happiness and prosperity of one-fifth of the entire population, directly interested in the employ of railroads. It touches and touches deeply the interest of every business in the country. It is a matter that comes home to both the producer and consumer, to the manufacturer and the agriculturist, to the shopkeeper as to the speculator in Wall street. In the last analysis the issue involved in the discussion of this measure is one vital to the whole nation. Railroads are the veins, the muscles, the nerves, the very viscera of the business life of this nation, and anything which threatens to disturb their orderly operation must throw into confusion the whole economy of the country. And such confusion or disorder means business and financial sickness for everyone.

Our railroads stand to-day charged with the responsibility of providing dividends on stocks and the payment of interest on bonds. Those stocks and bonds are held largely by the public. The stock may be "watered," as we say, but "water" represents mostly only the capitalized hopes in the day of the nothingness of the business, and shall their hopes be dashed, now that the realization is at hand? The majority of the holders of railroad bonds and stocks are not sinners, but innocent parties, whom, explicitly, the law protects in their investments. They are entitled to the earnings of those securities and those earnings are dependent upon the good management or operation of the properties upon which those securities are based.

The railroads are now prosperous. It is now proposed that the properties be controlled by Government bureau, though the Government, or its bureau, assumes no financial responsibility to the owners of the railroads for their profitable conduct and operation. The Government guarantees no compensation if the rates it fixes are ruinous to the roads. The Government disclaims intention of taking possession of the roads at a proper valuation. It only wants to run the business regardless of the rights of its owners to the increment thereof. Such an interference amounts, practically, to confiscation of property without compensation, and while the thoughtless may not worry much about taking a business away from the owner, they may possibly take pause to consider what will be the effect of the imposition of arbitrary and empiric rates upon the wages of the labor which will have to operate the roads on a rate basis that shall horizontally reduce profits. The losses of the railroad owner must come eventually out of the humbler operative—as all history of taxation and business regulation conclusively proves. The best friend of the workingman is the man who so conducts his business that it is profitable, since upon the profitableness of the property depends the rate of wages and the number of men employed.

One of the reasons advanced by those favoring this proposed legislation is that railway rates are excessive or that, as now adjusted, they constitute an undue burden upon industry. That the country is not suffering, but rather that it is prospering, under the present system of railroad rates can be easily demonstrated. The figures which I shall present are founded upon facts, and it is a popular and true saying that one fact is worth a thousand arguments. In the twenty-two years from 1880 to 1902 the population of the United States has increased 56.66 per cent. Has the demand for railway freight transportation suffered from excessive rates during that period? It has not merely kept pace with the increase of population, but has far outstripped it. Its increase in those twenty-two years has been 330.23 per cent—very nearly sixfold. During the same period the increase of railway passenger transportation has been 243.02 per cent, considerably more than four times the contemporary increase of population.

But that the railroad service of the country has improved greatly, not merely in quantity but in quality as well, may also be shown by a few figures—figures, too, which are thoroughly authentic. In 1902 the passenger services performed by the average mile of steam railway exceeded those of 1880 by 51.78 per cent. The freight service rendered per mile in 1902 shows an increase over that in 1880 of 115.14 per cent. If further proof of improved service is needed let it be found in the fact that whereas in 1880 the railway employees were 84 per 10,000 of the population, in 1902 they were 151 per 10,000. Again, in 1880 the aggregate amount paid out to railway employees was $195,350,013, or at the rate of $466 per employee. In 1902 it was $676,028,952, an average of $568 each. This certainly proves that, so far as higher wages could affect it, the railway companies were not allowing their service to deteriorate. Proof positive of improved service, however, is given in these figures which I now produce. The number of passengers carried 1 mile per employee in 1880 was 13,701; in 1902 it was 16,556. The number of

tons of freight carried 1 mile per employee in 1880 was 77,213; in 1902 it was 132,252.

This general plea is especially pertinent to conditions in the Southwest. The railroads have developed the Southwest remarkably. They have done it on a rate basis that has been reasonably fair. They have pushed into the territory at enormous expense. They have put the rate down to the lowest on everything out or in to get the Southwest product to the world, to get the world's product to the Southwest. No thoughtful person in the Southwest can imagine that a Government control of rates would have made or would now make the rates any better than they are made under the impetus of the railroad's desire for business and, in a measure, under the coercion of competition for the traffic. It seems to me that the Government control of rate making tends inevitably to the killing of individual railroad initiative, to the destruction of the competition which is the life of trade, and in the long run the tendency would be to force the rates higher instead of lower for all sections of the country. If it could not do that potently for fear of inviting political vengeance on this party or that, it might accomplish in effect the same thing by enforcing uniform low rates, the result of which would be such reduction of profits as would necessitate heavy reductions in wages on all the roads, and this would affect in turn every line of business with whom the workingman would have the less money to spend. An injury to one, thus, we see, becomes the concern of all. In a free field and no favor the railroads which have penetrated the Southwest have made a splendid showing. They have not bankrupted their owners. Neither have they rapaciously robbed the regions they have served. They have built up the territory and at the same time enormously increased the volume and profit of the business of the territory.

The rate-making power is, as was once said of the tariff, a local issue. Its exercise depends upon particular and often fluid conditions and changing circumstances. It is not likely, as I view the matter, that the exercise of the power would be more judicious and fair to all parties concerned under a national supervision than it is and has been under the untrammeled administration of men who knew the conditions indigenous to the region and met them with due consideration for the interests of their roads and the interests of general business. Conditions in rate making which have admitted of such development as that I speak of can not surely be inimical to the best interests of the country.

Nothing has been more accurately determined than the fact that railroad stocks are largely owned by small individual holders. Upon investigation it has been ascertained that 43 American railroad corporations, controlling 115,641 miles of railroad, or less than 57 per cent of the entire mileage of the country, have registered shareholders to the number of 225,037, averaging $13,484 each. In point of fact, small stockholders are in a majority among the owners of such securities. Savings banks also are large investors in steam railroad securities. In six Eastern, or Atlantic coast, States savings banks own $845,889,038 worth of railroad securities. Educational institutions likewise figure largely in such investments. Seventy-four colleges or universities, together with a number of secondary schools,

own railroad securities worth $47,468,327. Insurance companies investigated were found to own $845,889,038 worth of the same securities. To sum up, the total value of steam railroad securities held by insurance companies, savings banks, and educational institutions was $1,335,711,451. As the aggregate market value of steam railroad securities on June 30, 1900, was over $8,000,000,000, the above figures show that about one-sixth of the railroad property of the country is owned by small holders.

But to return to my exposition of the services rendered by the railroads in the upbuilding of the West and Southwest. No better illustration of the promptness and energy with which railroads assist in the development of new communities can be found than is afforded by Oklahoma. I find in the official records that the railroad mileage in that Territory at the time of the establishment of its Territorial government was only 278 miles. Since that date, in the comparatively brief period of fifteen years, a miracle of railroad building has been performed in that remote Territory. The records state that the total railroad mileage in Oklahoma on January 1, 1905, was 3,225 miles, an increase of 2,947 miles in fifteen years, a more than tenfold increase, railroad building on an average of very nearly 200 miles a year. Does this titanic energy show neglect of young and weak communities? Does it show any attempt to discriminate against them in favor of older and more firmly established communities? Does it not rather show keen sympathy with American communities in their efforts to emerge from the embryonic condition and be born into the vigorous life enjoyed by the rest of the nation?

Let any intelligent person reflect for a moment on the present condition of the older States east of the Mississippi under the railroad development of the past fifty years and note what their rapid and steady advancement has been. To such persons the question will spontaneously suggest itself: Should their sister States and Territories of the trans-Mississippi region—Missouri, Arkansas, Kansas, Texas, Oklahoma, New Mexico, Arizona, Utah, Nevada, and others—be deprived of the powerful railroad assistance which has done so much for Ohio, Indiana, Illinois, Pennsylvania, and other longer established States? That they will be deprived of this assistance if this proposed law should take effect is my firm belief and that of thousands of other business men and citizens of the West.

The comparative effects of railroad operation under both systems, the legislative rate making and the independent, may be demonstrated from experience. In Iowa, where rates are made by a State commission, the inelastic nature of the tariff based only on distance has driven practically everything except agriculture and mercantile business out of the State. On February 4, 1902, an editorial in the Des Moines Daily Capital pointedly said:

> The people of Iowa realize that they have a great State, and they are proud of it, but they are asking themselves why manufacturing industries, according to the census of 1900, increased in a greater proportion in Wisconsin, Illinois, and Missouri than in good old Iowa.
>
> The Capital is free to say that we believe the fault is with the Iowa railroad law and its iron-bound conditions.
>
> Not a single new industry has been built up in Iowa on account of the present law. Numerous packing houses and other industrial establishments are standing idle in various parts of the State.

To this exposition of the industrial condition of Iowa might be added a reference to the fact that with all the live stock that is raised there not a hide is tanned there, while Wisconsin, with very little live stock produced, has large and growing tanning industries.

It is established by census figures that in the increase of both population and railroad mileage during the ten years from 1890 to 1900 Illinois, Wisconsin, and Missouri considerably surpassed Iowa. In Illinois in 1890 the railroad mileage was 10,071, and in 1900 it was 11,103, an increase of 10 per cent. In 1890 in Wisconsin the railroad mileage was 5,639; in 1900 it was 6,530, an increase of 13 per cent. In Missouri in 1890 the railroad mileage was 5,886; in 1900 it was 6,875, an increase of 16 per cent. In Iowa in 1890 the railroad mileage was 8,692; in 1900 it was 9,185, an increase of 5 per cent. In 1890 in Illinois the population was 3,826,351; in 1900 it was 4,821,550, an increase of 25 per cent. In Wisconsin in 1890 the population was 1,686,880; in 1900 it was 2,069,042, an increase of 22 per cent. In Missouri in 1890 the population was 2,679,184; in 1900 it was 3,106,665, an increase of 16 per cent. In Iowa in 1890 the population was 1,911,896; in 1900 it was 2,231,853, an increase of 11 per cent. Likewise, in the aggregate value of manufactures, these three States greatly exceeded their lagging sister during that ten-year period. In Illinois in 1890 the value of manufactured products was $908,640,280; in 1900 it was $1,259,730,168, an increase of 38 per cent. In Wisconsin in 1890 the value of manufactured products was $248,546,164; in 1900 it was $360,818,942, an increase of 45 per cent. In Missouri in 1890 the value of manufactured products was $324,561,993; in 1900 it was $385,492,748, an increase of 18 per cent. In Iowa in 1890 the value of manufactured products was $125,049,183; in 1900 it was $164,617,877, an increase of 31 per cent. From the foregoing figures the calculation is derived that in 1900 the manufactured products per person were worth, in Illinois, $2,613; in Wisconsin, $1,743; in Missouri, $1,243, and in Iowa, $737.

The United States census shows that between 1890 and 1900 the manufacturing establishments of Texas increased in number 3,290, or 131 per cent. But examination of the details shows that of this increase 2,650 were cotton gins, 90 were cotton-oil and cake mills, and 325 were newspaper and printing plants, none of which manufacture anything; 184 were saddlery establishments, which includes harness shops and repair shops, and 323 were lumber mills, located there because the timber is there, and not because of favorable rates. Again, in 1890, when the railroad companies' tariffs were in force, there were 690 flouring and grist mills in Texas, while in 1900, after almost ten years of railroad regulation by the State commission, this number had dwindled to 289 such establishments. Yet this is the only important Texan industry that vitally depends on the adjustment of freight rates. Thus, the number of mills decreased 58 per cent, yet, meanwhile, the production of cereals increased 70 per cent. A startling fact in this connection is that the total output of flour and grist mill products increased during that period 24 per cent. These figures show that the small mill is being driven out of Texas by State regulation of railroad rates, and that the business is being concentrated in the hands of those who happen to be located advantageously. To overcome these inequalities of location under

the proper adjustment of freight rates is the whole problem of rate making, yet it is a problem which, after ten years of effort, the Texas commission has shown itself absolutely unable to solve. We thus perceive that to change the adjustment of freight rates from the hands of the railroad companies to the hands of the State commission has cost the 58 per cent of the flour mills of Texas their industrial existence, although, in the meanwhile, the raw material increased 70 per cent and the output increased 24 per cent.

On the other hand, in Wisconsin, under railway administration of transportation, the product of flour and grist mills increased 54 per cent, while the production of cereals increased only 8 per cent, showing that Wisconsin not only mills its own wheat, but a large quantity imported from other States. That the policy of the railroads afforded distribution rather than concentration of this business is shown by the increase of 44 per cent in the number of mills. In short, under State regulation of railroads the places in Texas which once had flour mills know them now no more, while under railroad management the places in Wisconsin which had no flour mills ten years ago now have flourishing ones. On the other hand, the State regulation of rates in Texas has concentrated the milling business in the hands of a few, driven 58 per cent of the mills in the State out of the business, and driven 40 per cent of the increased cereal production out of the State to be milled. While this has been going on in Texas the railroads have provided tariffs in Wisconsin under which the milling output increased 26 per cent more than the production of cereals within the State, and the new mills established made an increase of 44 per cent. In Texas there are 93 kinds of industries reported in the census, of which 17 show over a million dollars' investment each. In Wisconsin, with less area and less population, there are 155 lines of industry reported, of which 37 show over a million of dollars' investment each. If the Texas system of adjusting rates were conducive to industrial development, it would seem that in the ten years it has been in operation something other than negative results would have been attained.

The Southwest is not ultraconservative or fossilized, but it is rightfully prudent in opposing any legislation which shall so interfere with the sort of railroad management upon which its prosperity has been built that there is danger of an interruption or cessation of the section's development. The change of conditions contemplated is vital to the Southwest's prosperity. We fear that Government control will check railroad initiative. Railroad enterprise needs a free hand. Development must stop, we fear, if the chance taken in the investment is to be minimized by Government control. The new territory to be opened up will be for long without railroads if the men who build the lines can only do so on the assurance that they may not make them pay when built. Business men familiar with the situation in the Southwest, knowing what interference with railroad rates by State enactment has done to retard development, are amazed at the strabismus which sees in Government regulation a betterment of service for the people.

Furthermore, if the proposed enlargement of power be granted, there is no way of preventing secret rate cutting. A commission-made rate would be no more sacred to an agent hustling for business

than a rate made by a "gentlemen's agreement." The Commission may make a rate and the road may appeal, but the rate stands until the court decides the appeal. If the road wins its case, the road loses, for it has been carrying freight at the protested rate from the time it was established until the time it was decided unreasonable, and the road can not recover the difference between the unreasonable rate and the one for which contended. This, again, is confiscation. No commission could do more in the way of making low rates than the railroads themselves have done voluntarily in settling up the Southwest territory—the whole country—in rushing crops to the seaboard, in building up new communities. The roads have gone to the limit of cheapness, short of transporting goods at a loss. It is doubtful if there would be any of this under Government-rate control. It is doubtful if, under a national rate-making commission, there would be any consideration allowed the low rate on the long haul without breaking bulk. It is doubtful if, under the proposed new order, the railroads could make such rates as they now do on wheat and other products to the seaport. There is only the coldest logic in the proposition that if the national Commission goes a rate making it will have to do so on a fixed principle, which will mean a fixed rate per mile, regardless of other conditions. A fixed rate means no competition for traffic between railroads. It would prevent utterly the building up of traffic by the low rate on the long haul. It would prevent low rates one way at a time the heavy traffic is going the other way, to prevent the loss on the "empties." Fixed rates would paralyze business, because business conditions vary in different sections at different times. There are at times good business reasons for varying rates—reasons pertinent to business conditions—but the reason one road can make a low rate in one direction may not apply to another railroad on the same length of haul on the same kind of goods in a different direction. The railroads themselves will fix the rate low enough to get the business, now of this section, now of that, always consistent with conditions peculiar to that road, that particular business, that particular section. However we look at governmental rate making, it is of evil promise. At the most, it involves a step toward annihilating competition. It drifts inevitably to communalism and a general perfunctoriness of service, in which there would be no incentive to individual effort for distinction.

We had better "let well enough alone," especially as all the indications are that the change proposed may mean the immediate unsettlement of now prosperous business conditions as would be only less disastrous than the deadly settling down of such conditions into lethargy and stagnation, as a result of the fixed rate per mile per ton in all cases and in all directions, or, in other words, the death of the system of competition by virtue of which we live and have grown into a great nation.

The CHAIRMAN. Are there any questions?

Senator CULLOM. I do not care to ask any questions.

Senator KEAN. It is a very good statement.

The CHAIRMAN. Are there any questions?

Senator FORAKER. I want to ask one or two questions. What is the business in which you yourself are engaged?

Mr. CARLETON. The wholesale dry goods business.

Senator FORAKER. And you are yourself a shipper?

Mr. CARLETON. Yes, sir.

Senator FORAKER. And you come here as a representative of these boards of trade and chambers of commerce whose names you have given us?

Mr. CARLETON. No, sir; I come as the representative of the Business Men's League.

Senator FORAKER. As a representative of the Business Men's League?

Mr. CARLETON. And of the Interstate Merchants' Association and the Merchants' Transportation Association, covering about 600 business men engaged in the jobbing and some in the manufacturing business in the city of St. Louis.

Senator FORAKER. Doing an aggregate business, you told us, of 200 millions annually?

Mr. CARLETON. 200 millions annually; yes, sir.

Senator FORAKER. And this statement you make is made on behalf of all of them?

Mr. CARLETON. Yes, sir; I have accredited resolutions here authorizing me to appear in their behalf.

Senator FORAKER. Can you tell us what the sentiment of other business men in St. Louis is?

Mr. CARLETON. Well, generally speaking, there is a division of public sentiment, and perhaps rightfully so. Of that our friends will speak in a moment, who will tell you the other side of this question. They are interested particularly in the grain interests, and we differentiate between that and the legitimate commercial business or manufacturing business.

Senator FORAKER. There is some difference of opinion, then, among the shippers at St. Louis?

Mr. CARLETON. Yes, sir.

Senator FORAKER. In so far as there has been any expression, the business men of Cincinnati have expressed themselves in favor of conferring the rate-making power on the Interstate Commerce Commission. I wanted to ask you why there should be a difference of feeling on that subject between the business men of St. Louis and the business men of Cincinnati, if you could tell me.

Mr. CARLETON. Well, I do not know that. Possibly we may enjoy some advantages geographically over Cincinnati. Our trade may have grown to an extent that that of Cincinnati has not grown. That might lead those gentlemen to believe that this would possibly benefit their business; but that condition does not prevail with us.

Senator FORAKER. The advantage to which you refer as likely to have that effect is your situation on the Mississippi River?

Mr. CARLETON. Purely territorial; yes, sir.

Senator FORAKER. And your nearness to the Southwest?

Mr. CARLETON. Yes.

Senator FORAKER. You being the largest city in that region?

Mr. CARLETON. We are practically the gateway of the Southwest, located on the banks of the Mississippi River and reaching out——

Senator FORAKER. You spoke of the effect on business conditions in the State of Missouri of the adoption by the legislature recently of a scheme of maximum rates.

Mr. CARLETON. At the last session of the legislature the legislature passed a maximum bill, and the merchants of St. Louis and of Kansas

City and of St. Joe appeared before the committees and requested the nonpassage of the bill. We were not successful in it, however, and the bill was passed, and we felt that the operation of that bill would, of course, be to shorten the tariffs as between competitive points and the principal markets of the State.

Senator FORAKER. Has it yet been long enough in force for you to know what the effect of it will be?

Mr. CARLETON. No, sir; except the alarm and concern which it has created in the business interests there.

Senator FORAKER. And was that feeling you expressed pretty general among the business men throughout Missouri?

Mr. CARLETON. Yes, sir; very general. So much so that it is proposed to contest the law at once before the Supreme Court at the earliest moment.

Senator FORAKER. If there is that general feeling of opposition to such legislation, how did it come to be enacted?

Mr. CARLETON. Well, that is a different question. I would not like to be called upon to state what may actuate the average legislator; but sufficient to say that the bill was passed against the opposition of the business interests of the State. Our remedy lies, we hope, in the Supreme Court.

Senator CULLOM. Is that law actually in force now?

Mr. CARLETON. I really could not state when it becomes operative, but I think it becomes operative within six months from its passage.

Senator CULLOM. That is the reason I asked.

The CHAIRMAN. Mr. Ramsey said the 17th of June, I think.

Senator FORAKER. Some one gave us that information, that it has not yet gone into operation. So you do not know what the effect of that will be?

Mr. CARLETON. I absolutely have my own opinion as to what the effect will be.

Senator FORAKER. That is what you have expressed in your statement?

Mr. CARLETON. Yes, sir.

STATEMENT OF MR. WILLIAM P. KENNETT.

The CHAIRMAN. State your name, residence, and business.

Mr. KENNETT. William P. Kennett; St. Louis, Mo.; grain, stocks, and bonds.

The CHAIRMAN. You are a dealer in stocks and bonds?

Mr. KENNETT. Yes, sir; and grain.

The CHAIRMAN. You appear for whom?

Mr. KENNETT. For the Merchants' Exchange of the city of St. Louis and for the St. Louis Manufacturers' Association.

The CHAIRMAN. Under proper resolutions from them?

Mr. KENNETT. Yes, sir; which I will leave with the committee.

The CHAIRMAN. You can leave them to be inserted in your remarks.

Mr. KENNETT. Yes, sir. I will leave those to be inserted.

The CHAIRMAN. Have you a statement prepared that you would like to submit?

Mr. KENNETT. Yes, sir. It is very brief. So much so that it does not deal much in figures until they are all inserted at the close.

The CHAIRMAN. Now proceed.

Mr. KENNETT. We appear before you as a committee from the Merchants' Exchange of St. Louis, Mo., appointed by its president with the unanimous approval of its board of directors to "Urge the enlargement of the powers of the Interstate Commerce Commission as outlined by President Roosevelt and advocated by him."

We are also requested to say in behalf of the St. Louis Manufacturers' Association, comprising 250 members and representing that number of prominent manufacturing establishments of St. Louis, that they "heartily indorse the expressions of the President of the United States on the subject of enlarging the powers of the Interstate Commission and hope to be accorded a hearing before your honorable committee, when they feel they will be able to present to you such facts as may convince you of the soundness, the equity, and the justice of their position."

The Merchants' Exchange of St. Louis, with its seventeen hundred and ninety members, is representative of almost every commercial, industrial, and financial interest of the metropolis of the entire Mississippi Valley, with business relations extending more or less throughout that most fertile, rich, and rapidly developing section of the Commonwealth, in all that pertains to agriculture, mineral, natural, and manufactured products. It is the leading commercial organization of the Mississippi Valley, and we believe voices the opinion and desire of an overwhelming majority of the business and agricultural interests of said section in our attitude before you to-day.

Time would fail us to enumerate the trade and traffic of the fourth city of the United States, and hence we file with you a Merchants' Exchange Annual Statement of the trade and commerce of St. Louis for the year 1904, and ask that it be made part of our record before your committee, merely stating, by way of parentheses, that in 1904 the banking capital of St. Louis was eighty-odd million dollars; its bank clearings over $2,793,000,000; its receipts of grain over 62,000,000 bushels and of flour 2,355,000 barrels, with shipments of grain 24,000,000 bushels and of flour 3,300,000 barrels. Tonnage received and forwarded by rail about 37,000,000 tons. We refer you especially to pages 26 and 27 of said annual statement for facts and figures concerning St. Louis trade that are given more in detail in subsequent pages.

We deem it only proper, at the outset of our argument, to state (and you will please remember that we come only as and with the knowledge of business men having practical relations to the subject) that we rely upon the opinion of Attorney-General Moody as far as we can interpret the same for the legality of the proposition that the Federal Government has the power to regulate, supervise, and control transportation rates and fix the maximum future charges of carriers on transportation not exclusively within the various States.

We believe that railways are common carriers that serve the public (no matter who own them), and that from their very creation, franchises, right of eminent domain, grants of land and money bestowed, protection furnished, and their general scope and character, they are properly subjected to interference with, or supervision and regulation of, their conduct by the General Government.

In what way and by what measures this can best be done is the

prerogative and duty of Congress to determine and enact, and we are not wedded to any special measure. Any effective, speedy, and comprehensive result is the desideratum, however attained, that will safeguard and promote both the shipping and carrying interests. Nor are we here to bring railing accusations against the railways. Abuses in rebates; unjust discriminations; secret, unequal, and unreasonable rates, and all other illegal or improper allowances, privileges, and monopolies should be completely abolished, but not without recognition of the fact that there are always two parties to such wrong practices, and the receiver, as well as the giver, should be, as far as possible, restrained and divorced from his illegal acts.

As suggestions, however, we would state that in our opinion the Interstate Commerce Commission, as an administrative body, with either a court of transportation or the United States courts as its appellate tribunal, can be utilized to bring about the end sought by giving it power—

First. To thoroughly investigate both shipper and carrier to ascertain all the facts in any rate question in dispute.

Second. To decide as to the justice, reasonableness, and equity of rates and to correct same when proper in its judgment by naming the substitute rate or a maximum rate that should go into effect promptly or without delay.

Third. To compel carriers and shippers to obey and follow its rate findings and decisions. Prompt appeals from the decisions of the Commission should lie to the court, but as far as constitutional it should act as an appellate and not a trial court.

Stable, fair, and just rates thus established would inure to the benefit of both shippers and carriers, and in our opinion not only increase the net revenues of the latter, but give to their stocks, bonds, and other securities new strength and assurance of value.

An impartial tribunal composed of legal, business, and traffic men of ability and integrity, especially if given a life office, on the tenure of our Federal judges, should and could be secured; they would always have in their investigations and findings the keen assistance and counsel of the combined wisdom of all transportation interests concerned, and could surely decide more equitably and rationally on rates than possibly biased or at least interested railway officials that, whatever be their skill and judgment as men, must too often approach such questions with relations thereto already established that often prove embarrassing, if not fatal, to sound conclusions.

Railway rates are complex problems, but they are neither so mysterious nor esoteric that they can only be solved by traffic officials.

The survival or advantage of the fittest in their geographical, competitive, and inherent circumstances will doubtless to a great extent prevail; but that can not be avoided, and is bound to result sooner or later from the changes, progress, and development of economic conditions.

Railway management and policy is not an axiomatic nor an a priori conception, and there is hardly a feature thereof that is not debatable ground, even with those who control the destinies of our transportation lines.

The differential bases, the classification and commodity tariffs, the percentage and blanket rates, with the combination on locals and basing point adjustments, furnish enough diversity in the manner

and methods used by railway experts in making their tariffs (aside from charging what the traffic will bear) to take the matter out of the realm of science and make it at least a problematical question for other persons to consider and conclude on, when those persons could and should be a composite body, containing, besides such experts as the railways themselves possess, also broad-minded, intelligent business men to perfect the combination. Ideal conditions and perfect results will not be found on either side of the question.

In order that you may appreciate the necessity for action on your part to bring about the desired relief, and not leave the situation where it now stands, we have had prepared for your information, and beg leave to file as part of our statement, the following documents:

I shall very briefly state what they are, gentlemen, and, as I say, after that if you wish to discuss them or ask any questions concerning the same, we will ask Mr. Powell, who is with our committee and who is better qualified than myself, to answer them. I will say in the beginning that these have been prepared by the secretary and the acting commissioner, as you might call him, of the St. Louis Traffic Bureau, an organization that is jointly supported by the Business Men's League and the St. Louis Merchants' Exchange; and in addition to giving the rates with what would appear on their face, he has endeavored, in as plain and succinct a manner as possible, to state just what they mean in advance of each.

The CHAIRMAN. They will come in at the proper place?

Mr. KENNETT. Yes. I will not read that myself, unless you gentlemen wish me to, but I will state what they are.

The CHAIRMAN. Yes; just state what they are.

Mr. KENNETT. No. 1. Rates on bags from New Orleans to St. Louis.

No. 2. Class rates from St. Louis and competing markets to the Southeast, Alabama, and Georgia, with printed arguments by the St. Louis and Chicago merchants at St. Augustine, Fla., and New York. On that subject the Business Men's League sent a committee there in connection with the St. Louis Traffic Bureau.

Senator CULLOM. Is that the argument that you have there?

Mr. KENNETT. That is the argument.

Senator CULLOM. You want that to go into the record?

Mr. KENNETT. Yes, sir.

(The argument referred to is appended to to-day's proceedings.)

No. 3. Rates on cotton piece goods from St. Louis to Arkansas points.

No. 4. Class rates from St. Louis and Virginia points to Louisiana.

No. 5. Rates on groceries, hardware, etc., from East St. Louis and Chicago to southern Illinois.

No. 6. Rates on corn and oats from points on Chicago, Burlington and Quincy Railroad.

No. 7. Rates on corn and oats from Missouri River points to St. Louis, New Orleans, etc., during the late midnight tariff war and since restoration.

No. 8. Rates from St. Louis and Kansas City to Arkansas and Louisiana.

No. 9. Rates on wheat and corn from points on the Santa Fe railroad to St. Louis and Chicago and on wheat and flour from points on Wabash to lower Mississippi Valley points.

These statements show the existence of evident inequality and injustice in rates affecting St. Louis. Therewith are explanations as to their meaning and effect that were prepared by the secretary of the St. Louis Traffic Bureau, which some of the members of our committee are better able to expound to you further, if so desired, than its chairman.

Senator KEAN. You refer to discrepancies between the rates as between Chicago and St. Louis?

Mr. KENNETT. No, sir—well, some of them.

Senator FORAKER. That is what you read; is it not?

Mr. KENNETT. I merely say that these statements that I refer to show the existence of inequality and injustice in rates affecting St. Louis; but the Senator caught that understanding of it by the fact that some of these things are in relation to Chicago and some are in relation to New York and all other markets.

Senator CULLOM. The rate you gave was from Chicago to some lower point in the same State?

Mr. KENNETT. Yes, sir; all of southern Illinois, the rates from Chicago to those points as compared with the rates from St. Louis to those points. On one proposition Chicago is with us, and we are working together——

The CHAIRMAN. You are satisfied, then, so far as Chicago is helping you?

Mr. KENNETT. Well, Senator, there is a peculiar state of affairs that has come to pass in that regard. St. Louis did not hear very much from Chicago until about five years ago, but we have developed considerably, and we are very good neighbors, very friendly, and I think the Chicago people are good men, and we are closely connected with them in business relationship and all that, and perfectly willing to help them in that and everything else.

Senator CULLOM. They treated you very well in the recent world's fair?

Mr. KENNETT. Yes, sir; they have always done so, and we reciprocate whenever we can.

The CHAIRMAN. You are complaining of the operation of rates against St. Louis in favor of some other localities. You used the word "injustice" there; you think the rates are unjust to St. Louis?

Mr. KENNETT. Yes, sir; some of them.

The CHAIRMAN. And just to whom? Just to Chicago, Kansas City, New York, and other places?

Mr. KENNETT. Yes, sir.

The CHAIRMAN. As against St. Louis?

Mr. KENNETT. Yes, sir.

The CHAIRMAN. Do you not think that the Kansas City fellow is satisfied, and the Chicago fellow is satisfied, and the New York fellow is satisfied?

Mr. KENNETT. I think if we can plead our own cause successfully we are doing quite enough, and let the other fellow take care of himself.

The CHAIRMAN. When you complain of them?

Mr. KENNETT. We are not complaining of them. We are stating that in the rate-making conditions as they exist——

Senator KEAN. As you think they exist, you mean

Mr. KENNETT. Well, Senator, would you not grant that there is a 3-cent differential between St. Louis and Chicago? That is a normal, legitimate, proper difference that exists, does it not, under their tariffs?

Senator CULLOM. My remark was intended to help you out a little, Mr. Kennett.

Mr. KENNETT. You were helping me out, Senator. On some of these propositions we are working with Chicago——

Senator CULLOM. Let me state what you were saying. You are complaining that there is injustice to St. Louis, but you are not stating that there is injustice to any place else; you are simply pleading your own cause.

Mr. KENNETT. We are endeavoring to plead the cause of St. Louis, not of anybody else.

The CHAIRMAN. Then it becomes a contest between localities?

Mr. KENNETT. Not necessarily. Suppose, Senator, for instance, that the rate from one point is made on a class proposition, and on the other on a commodity the same thing. Now, per se, is that not unjust? Ought they not to be made on the same basis?

The CHAIRMAN. Well, that is not the question.

Senator CULLOM. That is what he is discussing.

Mr. KENNETT. I am discussing the proposition that, on the theory by which rates themselves are made, these inequalities exist. Therefore there are injustices.

The CHAIRMAN. You are striving to get as good a rate as another locality or a better one? That is what St. Louis is striving for, is it not?

Mr. KENNETT. No, sir; that is not the proposition. We are striving to get a rate to which we are fairly, justly, and legally entitled. For instance, let me read you a letter from J. C. Lincoln. I think you will recognize that he is an authority on that subject. These are not antiquated, ante nineteen hundred propositions. They are existing at the present time.

The CHAIRMAN. That is the Mr. Lincoln who was before our committee, is it not?

Mr. KENNETT. Yes, sir; and he is one of the best and ablest rate men that we have in the country—being with us, we naturally think so. It is merely to indicate to you that we are not beating the air that I would like to read the letter from him.

Senator FORAKER. Is it not true that your complaint is that St. Louis is discriminated against as compared with other localities in the rates to which you refer?

Mr. KENNETT. I do not know what you mean exactly by that, Senator. You see this data that we have given is so comprehensive. It is in regard to grain; it is in regard to commodities—hardware, groceries, and all that, for instance.

Senator FORAKER. Whether it would be in regard to one commodity or another makes no difference. We only want to understand you, Mr. Kennett. As I understand it, your complaint must be in regard to something, and it is in regard to discrimination against your city, is it not?

Mr. KENNETT. You might call it so, if you please. That is a good word to use. We have no objection to that.

The CHAIRMAN. That is what I wanted to get at. I asked that very question.

Senator CULLOM. Let him explain it.

Mr. KENNETT. It is the same old rose, no matter by what name you call it.

I was going to indicate to you a letter that we have here from Mr. Lincoln. He says: "Certainly you are correct. I am going to see about adjusting those rates." And I have here another letter from another leading railroad man, to show that these are real, actual propositions that exist.

The CHAIRMAN. What did Mr. Lincoln do?

Mr. KENNETT. He has not done anything as yet.

The CHAIRMAN. He has it under consideration?

Mr. KENNETT. Yes, sir; he has.

The CHAIRMAN. Possibly he will remedy these wrongs.

Mr. KENNETT. We hope so. We trust so. We are looking for it. But it is something that exists to-day, and therefore it is fair to lay it before you as one of the factors in this case.

Senator CULLOM. One of the things to complain of?

Mr. KENNETT. Yes, sir; and needing adjustment. That is all. My statement is very brief, as you will see, because I endeavored to make it as comprehensive as possible without going into any details.

The CHAIRMAN. What basis do you suggest for making rates generally?

Mr. KENNETT. I would not suggest any, because I do not feel really competent to do so.

The CHAIRMAN. How would you have the question of rates regulated and settled?

Mr. KENNETT. I think it should be settled by a competent body or tribunal, properly constituted. It seems to me that you gentlemen are the ones to decide what that body should be and how it should be done.

The CHAIRMAN. You do not think the railroads should settle the rates?

Mr. KENNETT. I do not say they should not.

The CHAIRMAN. What should the railroads do?

Mr. KENNETT. In what respect?

The CHAIRMAN. In respect to transportation. Should they fix the price of transportation, or adjust it?

Mr. KENNETT. Certainly; unquestionably the railroads in the first place should fix it; but there should be somebody to supervise them.

The CHAIRMAN. How extensive should that be? What do you want?

Mr. KENNETT. That is for you gentlemen to say, not for us.

The CHAIRMAN. Where a rate is too high you want it lowered?

Mr. KENNETT. Undoubtedly; if it is too high we want it lowered.

The CHAIRMAN. If St. Louis was satisfied in all these matters and Chicago was not, would you take up the Chicago case?

Mr. KENNETT. Not necessarily. We are not looking on one side only of this question. We are not looking at it in the selfish business way. St. Louis may have rates to which she is not entitled. We say, let there be a just and equitable adjustment of this matter.

The CHAIRMAN. Is there a general complaint in St. Louis of the rates made by the railroads being excessive and extortionate?

Mr. KENNETT. Well, they think the rates are not satisfactory to St. Louis.

The CHAIRMAN. Yes; but please answer this one question: Are the railroads practicing on the people of St. Louis and the business of St. Louis extortionate and excessive rates?

Mr. KENNETT. Here are nine separate and distinct documents to indicate that we think so.

The CHAIRMAN. You think so?

Mr. KENNETT. Yes, sir.

Senator KEAN. How much has the trade of St. Louis increased in the last few years?

Mr. KENNETT. Very largely, in spite of these things.

The CHAIRMAN. Is that extortion that is complained of, or discrimination?

Mr. KENNETT. Well, you put them both together and wanted a categorical answer, and I had to give it that way. In other words, you said "yes or no" to the question you put, and that is all I could say.

Senator FORAKER. These complaints have been itemized?

Mr. KENNETT. Yes, sir.

Senator FORAKER. One complaint is that rates are too high; another complaint is that rates may not be high, but they are discriminatory. We want to find out whether your complaint is that the rates are too high, or simply that they are discriminatory.

Mr. KENNETT. I beg your pardon, Senator; I did not read these documents, you know, that were presented in regard to these matters. These were gotten up by a very competent rate man, who has been with our traffic bureau for years and knows his business thoroughly, to show that those conditions exist. He has appended to each one his explanation of what they mean. This one I have before me is very short. Let me read that:

Attached please find a memo. showing rates from St. Louis and Kansas City to a number of stations in southern Arkansas and northern Louisiana, to which the rates from St. Louis are 2 cents per hundred pounds higher than from Kansas City. Should be the same.

That is, the natural and normal rates should be the same.

The CHAIRMAN. Now, Mr. Kennett, let me ask you this question: Is not what you are complaining about that you are discriminated against in favor of Kansas City?

Mr. KENNETT. Certainly.

The CHAIRMAN. Is not that the complaint?

Mr. KENNETT. Certainly; in this case.

The CHAIRMAN. In that case?

Mr. KENNETT. Yes.

The CHAIRMAN. Now, if you feel that that is a great injustice, why does not the Merchants' Exchange go right before the Commission and ask for redress?

Mr. KENNETT. Do you not think that that is asking a great deal of the Merchants' Exchange of St. Louis?

The CHAIRMAN. Not at all. It is a very powerful body. I know all about it, and am acquainted with its members.

Mr. KENNETT. I know; but the Merchants' Exchange can not to that extent interfere with the private business of every one of its members.

The CHAIRMAN. You appear here for the Merchants' Exchange?

Mr. KENNETT. Yes, sir.

The CHAIRMAN. Now, if the shippers are outraged by a discrimination, the existing law covers that, and why have you not made some complaint before the Commission? Why have you not taken these things to court?

Mr. KENNETT. If you will take a very private opinion on that subject, I think that the Commission is so emasculated at present that it does not amount to very much.

The CHAIRMAN. That is a great reflection upon the Commission, which we do not share at all.

Mr. KENNETT. I mean in giving force and effect to their findings. They can recommend, they can find, but how can they put their finding into effect at present? They can not do it.

The CHAIRMAN. You can go to the courts if you are not satisfied with the Commission's finding. You can appeal to the courts.

Mr. KENNETT. I would not want to enter into the legal features of the case; I merely state a practical situation as it exists with us to-day. You understand where we are.

The CHAIRMAN. You could enjoin any rate that is discriminatory and unjust, right now, to-day, under the law.

Mr. KENNETT. I am glad to have you say so. I wish that you could announce that in such a way that it would be authority, and be accepted by everybody.

The CHAIRMAN. It is the law of the land to-day.

Mr. KENNETT. I know; but there are difficulties about a thing like that, Senator. How can some little shipper avail himself——

The CHAIRMAN. Well, Mr. Kennett, if we pass another law it might be difficult to enforce it.

Mr. KENNETT. It might be; yes, sir. I will not say that it might not be.

The CHAIRMAN. The difficulty in enforcing the law is no reason why the law is not efficient.

Mr. KENNETT. That is the question—is it efficient?

The CHAIRMAN. As to the little shipper you spoke of—if he is discriminated against, he has his redress, has he not?

Mr. KENNETT. Yes, sir; but he can not afford to take it.

The CHAIRMAN. The Commission can, at its expense?

Mr. KENNETT. Well, we had a case, I remember, before the Commission that I think was there for nearly seven years, and nothing ever came out of it.

The CHAIRMAN. How long ago?

Mr. KENNETT. Oh, that was some time ago, sir.

The CHAIRMAN. How about these recent cases—this case of discrimination between Kansas City and St. Louis—has anybody taken that to the Commission or the courts?

Mr. KENNETT. Why, we endeavored to adjust it in a more speedy way, if possible. A man sometimes dies before the thing is reached. We go to the railroads with these matters and endeavor to adjust them first.

Senator CULLOM. How did the case you refer to happen to remain with the Commission seven years?

Mr. KENNETT. That would be difficult to state. I do not know. It was one of those difficult Texas cases.

Senator CULLOM. If that was true generally, it would be a pretty slow machine to grind through.

Mr. KENNETT. As I say, very often the man would be dead and buried and his obituary written before he would hear the result. It is a practical matter, Senator; it is not altogether theoretical. It has a theoretical side and a practical side.

Senator FORAKER. Mr. Kennett, what I wanted to call your attention to was that since 1893, when the Elkins law was passed, you do not any longer have to go to the Commission, except to say that Kansas City has a preferential that is unjust as against St. Louis, and ask them to proceed in the United States court to enjoin it, and you can proceed, and there is a summary hearing. The court is compelled to hear you immediately.

Mr. KENNETT. Is it unquestioned that that remedy lies?

Senator FORAKER. Unquestioned. The Supreme Court of the United States has held that the law——

Mr. KENNETT. I know nothing whatever about it; but I was reading some time ago a decision, or an opinion, rather—not a decision—to the effect that it had been decided by somebody, somewhere, that it was only between individuals that the Elkins law was effective.

Senator FORAKER. No; it was between localities that the Supreme Court held that the law applied. There is no question, I think, about that. But I want, Mr. Chairman, if you will allow me, to ask a question there. You gave us the rates from St. Louis and Kansas City, respectively?

Mr. KENNETT. Yes, sir.

Senator FORAKER. Have you any statement there showing how the rates from Cincinnati and St. Louis compare down into the southern territory?

Mr. KENNETT. That I will have to allow Mr. Powell to answer. I should say that in that southeastern situation it ought to be covered.

Senator FORAKER. Cincinnati claimed that you had a discriminatory rate as against her.

Mr. KENNETT. Well, that may be true. If so, let it be corrected. We are not asking that the interests of St. Louis or any other section be forwarded as against the general proposition of justice to all. If Cincinnati is entitled to it, I say, let her have it. That is our position, the position of the entire community.

The CHAIRMAN. That might hurt St. Louis, though.

Mr. KENNETT. Well, right is right, for all that, Senator.

The CHAIRMAN. Yes; but that might hurt St. Louis, and you might then complain that Cincinnati has a 2 cents better rate than St. Louis.

Mr. KENNETT. Oh, of course men complain of things that they think are wrong when they are only getting justice, that to which they are entitled. A great many men complain of being hung.

The CHAIRMAN. But men have complained before this committee, saying that it was a great outrage that the railroads were practicing on Cincinnati in favor of Chicago.

Mr. KENNETT. Oh, yes; I have no doubt you will hear all sorts of things on that subject.

The CHAIRMAN. Now, one moment. Do you approve of the recent law passed by the Missouri legislature?

Mr. KENNETT. No, sir.

The CHAIRMAN. Regulating rates?

Mr. KENNETT. No, sir; I do not think rates can be made in that way. I think no horizontal making of rates is the proper way.

The CHAIRMAN. Do you know of any recent rebates or discriminations granted by the railroads and received by shippers?

Mr. KENNETT. Well, Senator, about four or five years ago our firm was engaged in the export business; we shipped about 20,000,000 bushels of grain to Europe that year, but we have not done anything since.

The CHAIRMAN. I said "recent," so as to let you out.

Mr. KENNETT. Would you call that recent?

The CHAIRMAN. No; I mean during the last three years or two years.

Mr. KENNETT. No, sir; we have not been actively engaged in the grain business so as to know it ourselves.

The CHAIRMAN. You do not hear of rebates and discriminations? Do you think they are in existence now and practiced, given and granted by railroads, or not?

Mr. KENNETT. That I can not state; these things that are stated here I believe to be true, as I think they were prepared by very competent men, and some of them are admitted by the railroad traffic officials themselves.

Senator KEAN. How lately have they been called to your attention?

Mr. KENNETT. The 20th of April, sir, 1905. Is that late enough?

Senator FORAKER. Yes; but the question is, What was the reason—that they have not, perhaps, had time?

Mr. KENNETT. That is just what I say, sir; but notwithstanding that, they exist.

Senator KEAN. Very true; but is not the best way to go to the railroads?

Mr. KENNETT. That is just what I answered the Senator a moment ago. That is what we want to do, if possible; but you may not always get what you want from the railroads.

The CHAIRMAN. Then, as I understand your complaint, you state that it is a contest between localities as to rates more than anything else?

Mr. KENNETT. We are dealing with a very general proposition here. We are not espousing the cause of any man, and our traffic bureau always maintains that attitude. We do not, as a traffic bureau, take up the case of any one shipper unless it is a general proposition. That is a general proposition, for instance, that is stated in regard to the rates that cover all of southern Illinois, in regard to groceries and hardware and a lot of other articles. But if Tom Smith comes to us and has a special grievance against a certain road, we do not consider his case. We are not there to advocate those personal matters.

The CHAIRMAN. I will turn you over to Senator Cullom now.

Senator CULLOM. I think, Mr. Chairman, that this gentleman's

documents in which the rates are given, and which were not read to the committee, had better go in; otherwise we can not discuss them very well.

Mr. KENNETT. Yes; I should certainly ask that that be done.

The CHAIRMAN. It has been decided that that will be done.

Senator FORAKER. I want to ask the witness just one question. You spoke of being a large exporter of grain until a few years ago.

Mr. KENNETT. Yes, sir.

Senator FORAKER. Can you tell us what the rate is on grain to the port of New Orleans, for export?

Mr. KENNETT. No, sir; as I told you, we are now doing nothing whatever in that line. My understanding is that there is a 4½-cent differential between New Orleans and the Atlantic ports.

Senator FORAKER. Four and one-half cents?

Mr. KENNETT. That is my understanding; yes, sir. Chicago is contending for 3½. Is not that correct, Mr. Fish?

Mr. FISH. I do not know; my rate man has gone. I do not know about that.

Mr. KENNETT. I think that is it. I think there is a 4½-cent differential.

Senator FORAKER. I remember the statement that was made here by a gentleman the other day who was a rate maker, and who seemed to know thorougly all about it. He said there was a preferential of 4½ cents in favor of New Orleans as against Baltimore.

Mr. KENNETT. It is all in one of these papers, and Mr. Powell can tell you. What is that?

Mr. POWELL. Four and one-half.

Senator FORAKER. As against Baltimore?

Mr. POWELL. Yes, sir.

Senator FORAKER. Which made it 7½ as against New York?

Mr. POWELL. That is right.

Senator FORAKER. And 6½ as against Philadelphia?

Mr. KENNETT. As I understand, which has always existed. There is a wheel within a wheel there. For instance, the entire Atlantic seaboard is contending against the Gulf ports.

Senator FORAKER. Yes.

Mr. KENNETT. But then Boston and New York have their own internal quarrel with Baltimore and Philadelphia.

Senator FORAKER. Yes; it is not a matter that we are taking up here now.

Mr. KENNETT. No, sir.

Senator FORAKER. But New Orleans does have that preferential.

Mr. KENNETT. I do not know whether you would call it a preferential or not, Senator, because I believe that traffic should go along the line of least resistance.

Senator FORAKER. Yes; but would it go along the line of least resistance (if you call that the line of least resistance) if it did not have the benefit of this preferential?

Mr. KENNETT. Oh, I think it is entitled to it by all the circumstances surrounding the case. I may be mistaken.

Senator FORAKER. What entitles it to it?

Mr. KENNETT. Why, distance alone. The very position, the geographical position, determines it largely.

Senator FORAKER. Is New Orleans materially nearer to Chicago than New York?

Mr. KENNETT. Chicago is not the proposition; it is the question of Omaha, and out in that section, with New Orleans.

Senator FORAKER. The differential is the same?

Mr. KENNETT. What is that?

Senator FORAKER. There is the same differential in favor of New Orleans from the Northwest that there is from Omaha or from St. Louis or from any other point of shipment for export?

Mr. KENNETT. I would rather have a traffic man answer that.

Senator FORAKER. In other words, is it not true that if a differential were not allowed to New Orleans she would suffer as a result of it?

Mr. KENNETT. Why, undoubtedly; but it seems to me the real question is, is she not entitled to it?

Senator FORAKER. It has been thought among railroad men who agreed to that that she was entitled to it on account of the disadvantage she is under on account of relation to the water, having to come up through the river, and all that sort of thing, and having a longer ocean transportation ahead of her—that she was entitled to it to equalize that disadvantage?

Mr. KENNETT. We feel in St. Louis—Senator, if you will pardon my interjecting a remark—that our relation to the rail and water ways is such that with any equitable adjustment of rates we will get our due share. We are not afraid to take it on that basis.

Senator FORAKER. There is a question as to whether or not, if we should exercise the rate-making power, either directly or through a commission, we would have a right legally to grant and allow these preferentials.

Mr. KENNETT. What do you mean by "rate-making power?" I may say that we are absolutely opposed to that, and yet if you put it in another phase, I may say that we are in favor of it. We do not believe in any commission making rates for the railroads.

Senator CULLOM. Generally?

Mr. KENNETT. Generally.

Senator FORAKER. The proposition you have been talking about and are in favor of, as I understand, is that in the event of a rate being complained of, it should be the duty of the Commission to hear evidence and determine whether it was reasonable; and, if it held it was unreasonable, then to substitute a rate which would go immediately into effect?

Mr. KENNETT. Yes, sir; that looks to me like a speedy and effective way—of course with the right of appeal, as I have said here.

Senator FORAKER. If you will allow me just a moment; that is what we refer to when we speak of conferring the rate-making power.

Mr. KENNETT. Yes, sir.

Senator FORAKER. It is, of course, with that understanding.

Mr. KENNETT. Yes, sir.

Senator FORAKER. And if they could make one rate in that way, they could make as many rates as were complained of; and the question is whether or not in substituting a rate they would be at liberty to take into consideration these differentials in favor of Baltimore and Philadelphia and Newport News and New Orleans and Galveston as compared with New York and Boston. If it should be held

that they could not, so that differentials would be done away with entirely, and New York would get whatever freight might be taken there along the line of least resistance (to use your expression), and New Orleans the same, what would be the effect?

Mr. KENNETT. I would say that we would safely leave that to such gentlemen as Mr. Fish, who are amply able to take care of themselves; and they will see that the thing is attended to.

Senator FORAKER. That is, you think no differential would be needed?

Mr. KENNETT. No, sir; I say this: That whatever was done unjustly and improperly along those lines, the powerful antagonists, as they might be called, in the situation are such that they would be bound to adjust it more or less equitably among themselves.

Senator FORAKER. Yes; but suppose that they have not the power? Private individuals engaged in business can do a great many things that the Government can not do. When the Government undertakes to exercise its power to regulate commerce it is restrained and governed and controlled by the restrictions which the Constitution imposes upon the exercise of that power.

Mr. KENNETT. I would not like to be heard on that subject.

Senator FORAKER. One restriction is that no port shall be preferred over another of a different State. Now, then, if it should turn out that there was no power to give a differential to New Orleans, I simply wanted to know what, in that contingency, without debating the question—because it is a debatable one—would, in your opinion, be the effect on New Orleans?

Mr. KENNETT. Why, I think New Orleans would get what she was entitled to. In other words, I can not believe, Senator, that the enunciation of any such principle as you have stated here can ever obtain.

Senator FORAKER. That principle does obtain now.

Mr. KENNETT. Absolutely?

Senator FORAKER. The granting of differentials.

Mr. KENNETT. But is it not a question of interpretation as to what you mean by "preferences" and what you mean by "differentials?" In other words, let me put it as a practical business matter: Say that New Orleans is 500 miles from the producing territory, and that it has practically a level road, with no grades or curves to speak of. My understanding is that Mr. Fish, with one of his mogul engines, can come pretty near taking 50 cars of loaded grain to New Orleans.

Senator FORAKER. Yes; and that is what New York has said, and that therefore Mr. Fish does not need any differential in order to take his business to the port of New Orleans.

Mr. KENNETT. Is he not entitled to all that is just and right, regardless of his situation?

Senator FORAKER. He is entitled to all that natural advantages give him. We want to know whether he is entitled to that which is given to him by agreement, aside from the question of natural advantages.

Mr. KENNETT. But is not that a natural advantage? In other words, can you take away any of those things? Will they not obtain in the end?

Senator FORAKER. We do not take any away. We have improved the harbor, and spent millions of dollars to do it. We have improved the river, and spent many millions of dollars to do that. The only

question is whether New York and New Orleans and Galveston should each stand on its own advantages and have no help by differentials or otherwise. I only wanted to get your opinion as to what would be the effect if that should be the result of this legislation.

Mr. KENNETT. Do you mean by that that anybody would say that New York was to absolutely have the same rate from, say, Topeka, Kans., or from Omaha, or from any of those ports that New Orleans had—absolutely the same rate?

Senator FORAKER. No; I mean to say that New York would have whatever rate they saw fit to give her, and that New Orleans would have whatever rate they saw fit to give New Orleans; but there would not be any agreement that the New Orleans rate should be so much lower than the other rate—that is all.

Mr. KENNETT. Have you not your midnight tariff business over again when you come down to that? Is it not a scramble for business?

Senator FORAKER. That is not the point. I only wanted to know from you, if I can—then we will have to fight out the rest of it—what, in your opinion, would be the effect of taking away from New Orleans her preferential of 7½ cents as compared with New York?

Mr. KENNETT. The 7½ cents might be adjusted, but I do not believe you can take away a differential in favor of New Orleans. I think it rightfully belongs to her, and that you can not take it away by any method you may use. Now, what it may be is a different question. I would not pretend to say that.

The CHAIRMAN. You may be excused, Mr. Kennett.

By direction of the committee the following arguments are printed in connection with the statement of Mr. Kennett:

ARGUMENTS BY REPRESENTATIVES OF THE CHICAGO SHIPPERS' ASSOCIATION AND THE ST. LOUIS TRAFFIC BUREAU, REPRESENTING THE BUSINESS MEN'S LEAGUE AND THE MERCHANTS' EXCHANGE OF ST. LOUIS, MO., FAVORING A READJUSTMENT OF FREIGHT RATES FROM CHICAGO, ILL., AND ST. LOUIS, MO., TO THE SOUTHEAST.

[Submitted at a convention of traffic officials of transportation lines, members of the Southeastern Mississippi Valley and Southeastern freight associations, at St. Augustine, Fla., January 18, 1905, and at a meeting of executive officers of the interested transportation lines at New York City, February 23, 1905.]

Arguments submitted at St. Augustine, Fla., January 18, 1905.

Mr. BARTLETT (of Hibbard, Spencer, Bartlett Company):

"We are not here to make long speeches; we came to do business. We have come to ask you, gentlemen, to lift the embargo upon commerce now existing between the Middle West and the southeastern portion of this country. We are not calling in question the judgment of the railroad officials who, twenty-five years ago, built a Chinese wall along the Ohio River and down toward this State, virtually paralleling the Mobile and Ohio Railroad. We came to call your attention to the fact that there have been radical changes in the conditions during the past quarter of a century, and that the basis upon which that judgment was founded no longer exists. We have occasionally scaled the wall at great expense of labor and money; now we ask that you raze the wall to the ground and put

us in proper relation to the manufacturers and merchants of the growing Southeastern States.

"In the little I have to say, I beg you will bear with me if I speak wholly from the standpoint of my own line of business—the hardware—for I know no other business. Others will talk to you from the standpoint of grocery, dry goods, boot and shoe, and clothing manufacturers and merchants.

"During my early business experience (and you can readily understand that comparatively few years have passed between then and now), the hardware sold in the United States was largely made in Europe, much of it in England. To-day the United States is exporting to England the same lines of goods that we imported at that time. A few years later, when the railroads established the relative rates of freight between New York and Philadelphia and the Southeast, and St. Louis, Cincinnati, and Chicago and the Southeast, giving the former the sales of merchandise and the latter the furnishing of food products, the hardware consumed in this country was manufactured in England. At that time, we, in Chicago, felt that we were going beyond the confines of our legitimate territory when we diffidently asked the merchants in western Indiana to buy their goods in our market. To-day, a very considerable percentage of the hardware used in the United States is manufactured in the Middle West, and we are profitably selling general hardware through a corps of traveling salesmen in New York, Pennsylvania, and West Virginia, and special lines in New England.

"Are you aware, sir, that the value of manufactured articles (I am not referring to hardware alone) produced in that small area, which is inclosed by the outer belt line at Chicago, is within 15 per cent of the entire income from freight and passenger traffic of all the railroads in the United States? It is a fact. As the centers of population are constantly changing, so are the centers of manufacturing and trade; and, at the present time, St. Louis, Cincinnati, and Chicago are very near the bull's eye.

"We are doing a little business in the Southeast, at very great expense and without profit, but not a tithe of what we can profitably do when the Southeast is no longer forcibly sequestrated from the Middle West.

"Now, what are we asking? Not that the freight rate from Chicago to an inland point 700 miles distant be made exactly seven-twelfths of the all-rail rate from New York to the same point, a distance of 1,200 miles, because there are other elements than mileage which enter into the making of rates, but that the rate be made very considerably less for the short than for the long haul, rather than 15 or 20 per cent greater.

"We are asking that, following the establishing of equitable rates, improved transportation facilities between the Middle West and the Southeast be afforded, so that the buyer can no longer truthfully complain of discrimination in favor of New York and Philadelphia as regards time in transit.

"We are not here asking for a reduction in rates which shall decrease your revenue, but for an adjustment of rates which, through increased business, shall add to your revenue.

"We are not here, gentlemen, demanding anything at your hands; we are simply telling you of the conditions as they exist, and of their

effect upon our business, depending upon your sense of right and justice to make the rates between competitive points relatively correct, and facilities relatively equal."

Mr. FARWELL (of John V. Farwell & Co.):

"Mr. Chairman and gentlemen, coming down on the train from Chicago, in conversation with some of our party, I made a remark quoting what President Hadley at one time said, in defining what an educated man was. He was asked to define an educated man, and he said: 'I think an educated man is one who sees things in their proper relations to one another.' And I think it is a very good definition, and the more we think about it the better we like it. Now, if I was trying to define a constructive business man, I think I might say a constructive business man is one who sees and puts things in their proper relation to one another. I am very sure that every one of you, gentlemen, will conform to the definition of an educated man, but what we are down here for is to endeavor to see that you will endeavor to put things in their proper relation to one another; not only see them, but put them in their proper relations to one another. We feel that you, gentlemen, knew everything that has been said about the conditions. We feel that we can't tell you any new facts, in all probability, in regard to this southeastern situation, in connection with Chicago and St. Louis and the East; but we did feel that we should come down here and press upon you the importance of our particular position and the needs of Chicago, considering the great changes that have come about in the last twenty or thirty years.

"Mr. Bartlett has told you some facts in regard to the hardware business, and following on the same lines, I will try to tell you a few facts in connection with the dry-goods business. I began, not as long ago as Mr. Bartlett, but some twenty or twenty-five years ago, in the dry-goods business, and at that time we were buying all our cotton goods and all of our woolen goods, and other things that we handled in our business, in the East, made mostly around Boston, New York, Philadelphia, and Baltimore, shipping from those points, shipping from New England points, but gradually that condition has changed.

"The South, as we all know, has built up enormous cotton mills, and the heavy cotton sheeting business has practically gone from New England. Those mills are drying up, going out of that business, throwing out their machinery that makes the heavy goods and putting in machinery that makes the lighter goods, where the freight is a small relative proportion of the value. And that has brought about the fact that we don't ship so many goods, so far as the freight goes, from the East, but we ship them from the South, many of them right from this very section of the country we are talking about. Right in North Carolina there is one mill shipping 60 carloads of goods to Chicago in a season, and a great many of these same goods are brought right back to this very section. Almost everything that is sold in the original case is shipped from the mill, without going to Chicago, but a great many of the goods are sold in broken bulk, and a part of that goods and other goods comes from there. So the eastern situation does not enter into this thing at all. It is scarcely an item in the heavy cotton goods, coming from the South, going up to Chicago, and coming back here into this very section.

When it comes to woolen goods, most of the heavy woolen goods, where the freight is a large factor, are made in and around Chicago and the West. We buy heavy woolen goods in Indiana, Wisconsin, Illinois, Kansas City, Minneapolis, and away out to the Pacific coast—California and Oregon—and those goods are shipped into the South, wherever we do business. Those goods were formerly purchased in the East, in New England, and in Philadelphia. There were large factories there. Some of them have failed because they could not bring the wool from the West, and manufacture it, and send it back; probably there are other reasons. Anyhow, they have failed, and those western mills have taken the western business. While we don't manufacture goods, in the strict sense of the word, we do buy raw material and sell to the factories. But these goods that enter into this freight problem we buy right around us, and they don't any longer come from the eastern centers, for which these freight tariffs, as we understand it, were built up.

"Of course we do buy the lighter and expensive woolen goods there, such as are manufactured by the American Woolen Company, and high-priced dress goods, where the freight amounts to but a small percentage of the value of the goods, so that it doesn't cut any figure, really, in the shipment of the goods, because the freight is such a small factor. But in all these other matters, when we come to ship them into this southeastern territory, the very first question a customer asks us is: What is the difference in freight between your place and New York or some other place? We can't do business on these heavy goods especially unless we can have the freight equalized.

"I might add that when many of these heavy cotton goods made in this southeastern section are shipped both to New York and Chicago and then sold and reshipped South, they pay 15 cents to 20 cents per hundred less each way to New York and back than via Chicago. This doubles up the handicap against which Chicago is obliged to contend and renders the unfairness still more burdensome."

Mr. SPRAGUE (of Sprague, Warner & Co.):

"It would be impossible for me to add anything to what Mr. Bartlett and Mr. Farwell have already said. I am not going into the details of the situation, as that will be brought up later. All I can say is that in the experience of our firm, while we are selling a considerable quantity of goods in this territory we are discussing, and have been for some time, still, the only way we have been able to do so is by practically sacrificing most of the profit to equalize the freight rates with the other markets with which we come into competition. We don't feel that we are on an equal footing. As both Mr. Bartlett and Mr. Farwell have said, we have only come down here to ask that this matter receive your careful consideration, and also to ask that some action be taken which will place us on a more equitable basis."

Mr. STRONG (of Selz, Schwab & Co.):

"I shall occupy only a few moments of your time, and in speaking to you from the shoe standpoint I want to say to you at once that we, in that line, have no desire to ask anything of you that is unfair. We don't want any advantage over the other fellow; but we don't want the other fellow to have any advantage over us. Unfortunately for us in the shoe line, the present existing rates from the East into this southeastern district, and from the West here, give the East a

very material advantage, and we in the West are at a very material disadvantage. The rates, substantially the present rates, I understand were put into existence about twenty-five or twenty-seven years ago. Now, conditions have changed very materially in that time; and I know of no line in which they have changed more than in the shoe line. Twenty-seven years ago Boston and its environment was known as the shoe-manufacturing center of the country. To-day that is different. To-day the shoe-manufacturing center is in the West. I mean more specifically St. Louis, Chicago, Milwaukee, Cincinnati, and other points that might be named. To-day the West largely leads the East in the product of manufactured shoes, and the two sections are in actual competition with each other. And conditions have changed also in another way, and that is as to the capacity and willingness of the people in the South to buy a better grade of shoes than formerly. They want to buy our shoes, and we want to sell them. We can sell them just as cheap as the East, if we are placed on a parity of rates. The firm in Chicago of which I am a member came into the South possibly ten years ago, and entered into the southeastern district possibly five or six years ago. In the South, meaning that section lying to the west of this southeastern district, we have built up a very considerable trade, I may say a large trade, and while we have done moderately well in the southeastern territory, what we have done has shown us what we could accomplish if we were on a right basis of rates.

"We have been making, during this last year more particularly, special efforts in this southeastern district, and we have been coming more frequently in contact with this proposition of equalizing rates. It is a thing we can't possibly do, and when it is demanded of us that we shall equalize the rates or drop the order—lose the order—we lose it.

"Now, as I said before, we don't want any advantage over the East; we want simply to be placed on the same basis, and in behalf of the shoe interests of the West I ask you, gentlemen, to consider the matter and give us proper relief."

Mr. BARLOW (manager Chicago Shippers' Association):

"In approaching the subject before us, permit me to say we do so believing it to be the earnest desire and intention of the transportation companies to so make and adjust their rates as to do substantial justice to all localities and parties who desire to become their patrons, thereby furthering our commercial as well as your financial interests. Evidently there is not, nor can there be, any difference of opinion affecting the correctness of this statement. For many years the preamble to your agreement read, and probably so reads at this time: "The object of the association is to establish and maintain tariffs of uniform rates, to prevent unjust discrimination, and the securing of a proper correlation of rates, such as will protect the interests of competing markets' (note the wording and distinction—competing markets, not railways) 'without unjust discrimination in favor of or against any city or section' (again note the wording—city or section).

"May I ask, have you done this? Are you doing it to-day, especially in the matter that brings us before you?

"Admitting an agreement on this point (and statements of this kind invite conferences of this character), it therefore naturally fol-

lows, does it not, that when inequalities appear, whether intentionally or by reason of conditions arising that for the moment are beyond control, the shipper has acquired the right of hearing, that he may set forth the injury done to or threatening his interests.

"These conferences between transportation officials and the patrons of their companies have long ago ceased to take on a spirit of hostility or be looked upon as antagonistic to the interests of either. On the contrary, they should and do lead to a better understanding of the situation and create a sentiment of tolerance and good will that is conducive of good results to all concerned.

"We certainly hope this meeting will make us better acquainted and disclose more fully to you the needs and necessities of the West, as affecting their business relations with the South.

"We are so strongly impressed with the idea, and we desire in the beginning of our remarks to remind you of the fact, which we may often repeat, that the year 1905 is an entirely different era than 1878, and that neither the problems confronting you nor the controlling factors are the same to-day they were thirty years ago. Nor are commercial conditions to be compared with a generation past. We must, I take it, face the present situation as it exists, dealing fairly with it. If you could not solve the problem years ago and do justice, as your declaration sets forth, to all commercial interests, it does not follow that it can not be brought about to-day. It may be said the suggestion is radical, that the present rates have been long in effect; but does not that very fact disclose the necessity for a change? Do not the present possibilities of the West only intensify the unfairness of the situation and make its continuance more irksome and burdensome, not only to the shipper, but to some transportation interests?

"In dealing with the present rate adjustment we disclose the rates relatively and in themselves to be at present substantially as they were twenty-five years ago. Perhaps the history of the present adjustment is almost traditional with some of the younger gentlemen present; therefore I am going to ask you to deal with the case in the light of the conditions as they exist to-day, bearing in mind your desire and announced determination first mentioned, to deal justly with all localities and persons.

"I can not hope to disclose any condition of rates with which you are not perfectly familiar, but I beg your indulgence while I refer you to the situation at one city, which illustrates the conditions that exist generally throughout the South. I refer to Knoxville, Tenn. This is an inland city.

"The nearest and practically the only available ports are Norfolk, 574 miles; Savannah, 530 miles, and Charleston, an equal distance. The distance from Chicago is 580 miles; from New York, all rail, 735 miles; Boston, 948 miles; Baltimore, 550 miles, and from New York, via Savannah, 1,270 miles. It would appear as though these distances preclude the suggestion that the rates from the East to this point are the result of ocean competition. On the contrary, if water competition does exist, it must be by reason of the Tennessee River, but that suggestion would affect the western more than the eastern situation, as the river seeks its outlet at the Ohio. We think it reasonable to conclude, therefore, that other conditions, not necessarily existing at the present time, brought about the adjustment of rates now in effect.

We assume the conditions of transportation locally, from Savannah, Charleston, and Norfolk, to be the same as elsewhere in the South, and that the conditions north of Norfolk as to all rail is the same as north of the Ohio River. The above is, we think, a fair statement of the geographical and transportation situation. Now, what is the situation as regards rates?

"The distance from Chicago is 76 per cent of New York and 60 per cent of Boston, but the merchandise rates are higher than from New York or Boston. The question naturally arises, why? And is it desirable or necessary, all conditions considered, to longer continue this adjustment?

"What is true of Knoxville applies quite generally throughout the South, but is intensified at points west of Atlanta, where geographical conditions seem to be, if possible, more favorable to the West.

"As an illustration, kindly review the adjustment at Montgomery, to which point the distance from New York is 1,100 miles, against 750 miles from Chicago; yet the seaboard rates are substantially 10 to 20 per cent less than from Chicago. Into some of these Alabama points one or more lines own their own rails from Chicago, and must necessarily look to the West for a reasonable representation in the traffic.

"I recall that in considering the Knoxville adjustment with a Southern Railway official some months ago he endeavored to point out to me that Atlanta was the key to the southern situation, being the largest city and in close proximity to the sea. I failed to catch the logic of the argument then, and still fail to comprehend it. If Atlanta is the acute point of water competition, does it naturally follow, after harmonizing the situation at that point, we draw away with less rates at Knoxville, Tenn.? Do we look to find the same adjustment at Montgomery? We admit the South is surrounded by water and that its competitive influence is felt to some degree, but we contend that it is not such a controlling factor as to make necessary or justify the present rate adjustment.

"The condition disclosed, we believe you will concede, is most extraordinary, and one utterly impossible of satisfactory explanation; in fact, impossible of any explanation that appeals to the shipper or to the traffic official not thoroughly conversant with the real underlying reasons and purpose of the adjustment, now quite thirty years old.

"I have never heard any attempt to justify the adjustment except upon the ground of expediency, based upon conditions existing thirty years ago. As evidence of this, let me quote from a few letters written by southern traffic officials. In April, 1890, one high in your councils wrote:

"'The injustice of the present basis of rates must of necessity be apparent.'

"Again: 'While the adjustment may be unfair, as we think it is, it can hardly be said to be wholly arbitrary,' etc.

"Again, from another official: 'I have always thought the rates from Chicago to southern points on the higher classes ought to be the same as from New York. This would not harm the East, and would hardly be enough in favor of the West.'

"We appreciate the fact that men can thus frankly express their personal and official opinion, and yet be compelled by force of circumstances beyond their control, to do otherwise. I had hoped to

avoid reference as above, but it seems necessary in order to lead up to our contention, that conditions perhaps not generally understood worked to create, thirty years ago, a situation not then entirely satisfactory to all interested lines and greatly prejudicial to the business interests of a large part of the country, and further, to emphasize the fact that those conditions no longer exist as an absolute controlling factor, and therefore the time has arrived when the adjustment should be modified. What changes in the railway situation in the South does the history of thirty years disclose? Need I dwell upon this phase of the subject? Large systems have grown up, developed, and become cosmopolitan in their interests. They no longer serve and have their entire success centered in one locality. Their iron arms stretch out, asking for the patronage of the East, West, and South on fair and equal terms to all. Is this not a true statement of present conditions as differing entirely from 1878? One large road having its northern terminus in Chicago has greatly enlarged its field of operation in the South, and another still larger has not only touched the South, but has recently extended its influence to Chicago. Again, two large roads which operate entirely in the South have embraced Chicago by ownership. What great road operating in the South to-day has not in itself, or by ownership, or interest, as great hopes and expectations from the West as from any other section of the country?

"It is by virtue of existing conditions as well as your declaration of equal justice to all cities and localities that makes us strong in the belief that you will find a way to relieve the present unbearable situation, injurious, we believe to your own as well as to our prosperous development.

"It will be recalled that in 1878, when the present rate adjustment had its birth, Chicago was struggling to recover from the most disastrous conflagration in the history of the world. Her few commercial and manufacturing industries were paralyzed. At that time the population and manufacturing interests were comparatively small. Her greatness depended largely upon her supremacy as a receiver and distributer or farm products. At that time, probably 75 per cent of the merchandise handled had its origin in the East, and Chicago acted largely as a redistributer only.

"I recall now that the claim was set up as late as 1894 that this very condition would debar Chicago from the markets of the South, even if the rates were equal. Now everything has greatly changed. The products of the farm, aside from the packing houses, has to a great extent moved to and beyond the Mississippi River, and the States of Wisconsin, Indiana, and northern Illinois are a beehive of manufacturing industry. I think it a conservative estimate the manufacturing interests of the district of Chicago have increased 500 per cent in the last twenty-five years. Let me read from a report recently made by Mr. Edward White on the growth of the manufacturing interests of Chicago. By Chicago is meant the territory under its influence:

"'It has developed at a rate which the outside world does not appreciate and estimates that it must now have about 23,000 distinct manufacturing plants, with a total output aggregating $1,100,000,000, or about 10 per cent of the value of the total manufactures of the country.

"'Chicago now ranks not only first in packing, but in foundry and machine-shop products, and it is a close second to New York in lumber products and furniture. It is second in the production of men's clothing and in malt liquors and publishing; third in tobacco and women's clothing; fourth in flouring-mill products, and fifth in leather goods. In the number of its establishments, in the capital invested, in the number of wage-earners and the amounts paid them, and in the gross value of its products it is second only to New York.'

"Gentlemen, Chicago and the Central West is at last prepared to enter the field and a fight for commercial supremacy. We look to the South as a fruitful field for the profitable distribution of our products. In the furtherance of our efforts we come and ask you to terminate the present unbearable situation by putting into effect the cardinal principle of your association, viz, 'Equal justice to all cities and localities.'

"Gentlemen, we are not here to complain generally of your rates in themselves, but more particularly of the relation of rates, one producing and distributing territory versus another. We believe our geographical location justifies lower rates to a large part of the southern territory than from New York and Boston. Certainly no conditions exist now nor ever existed that really justified a lower rate from those cities to at least a large part of the South.

"Neither do we believe the present situation makes necessary the adjustment under which the West is, substantially speaking, debarred from this territory as a profitable field.

"We ask you to go into this subject with a determination to find some relief for us. Be assured, gentlemen, of our firm conviction our cause is just and complaint well founded.

"Anyone having a complaint so just as ours must, of course, have some suggestions as to a remedy. Let us offer one:

"We admit distance is not an absolute controlling factor in making rates—never will and never should be—but is it a factor to be considered, as it does, to some extent at least, affect the cost of transportation? Surely, to put it mildly, it can not be used as an argument against our proposition.

"That I may not consume your time in a long array of rates, permit me to confine our suggestions to a few points. The distance from New York to Atlanta, all rail, is substantially 850 miles; by ocean and rail, 1,180 miles. The distance from Chicago is 733 miles. From this it appears the all-rail distance is 120 miles in favor of Chicago.

"The distance from New York to Montgomery, all rail, is 1,050 miles; ocean and rail, 1,100 miles, and from Chicago 745 miles. The distance to Birmingham, all rail, from New York is 1,040 miles; ocean and rail, 1,170 miles, and from Chicago 651 miles. Now, gentlemen, let it be distinctly understood, our contention is Chicago is entitled to, and you are justified in making, less rates from that city than from New York to at least all the territory west and north of Atlanta, yet to suggest some readjustment that may afford some measure of immediate relief and which must impress you with its perfect fairness, we suggest for your earnest consideration the rates from Chicago to Atlanta should not exceed the all-rail rate from New York, they having a proper relation to the ocean and rail rates, and

that the rates from Chicago to Montgomery should not exceed the ocean and rail rates from New York.

"We desire to impress upon you our strong convictions that to Birmingham and Chattanooga territories the situation justifies a materially lower rate from Chicago than from the East. The geographical situation certainly warrants this. Again, the rates from Chicago to common points should spread over the same territory as they do from the East, and not build up on arbitraries, unless they do from the East.

"In this struggle we are reminded of the story of the hunter and the bear. You recall the story. The hunter, realizing his situation to be a desperate one, raised his eyes to Heaven and prayed, 'Lord, if you can not help me, do not help the bear.'

"Now, gentlemen, our contention is that you have been helping the bear long enough. He is a strong and lusty fellow and amply able to fight his own way on equal terms with us, the hunter. By doing this you not only avoid getting into the fight, but ultimately profit by the changed conditions.

"Gentlemen, so great is the necessity of the situation that we request, first, we be advised promptly of your probable action, and, second, if our petition is negatively considered, we be advised of the reason therefor. We believe the request reasonable and becoming."

Mr. FRANKLIN MACVEAGH (of Franklin MacVeagh & Co.):

"Mr. Chairman and gentlemen, you are hearing from such a succession of Chicago men that, though a little later you will hear from St. Louis, it is well even now to call attention to the fact that this is not a mere contention of one city that we bring to you. It is not the concern of one city at all; it is the concern of a very large portion and a very important portion of the whole country—the Middle West especially. The seriousness of the situation, as it appears constantly to us in the ordinary course of the transaction of our business from day to day and from week to week, is shown by our presence here. It was not convenient for any of us to come here. I am sorry to say that, as far as I am concerned, my salary does not go on while I am here. We should like to come to St. Augustine if we could stay; but we have to go back, and the consequence is that we are here simply from a sense of the urgency and great importance and seriousness of these questions to us. We could easily have brought you from Chicago a delegation much larger than ours—a delegation as large as your own body—but that was not thought necessary. But our delegation is representative; it has the credentials of our whole city—not in writing, but we feel perfect assurance in telling you that we have those credentials. We have really the credentials of the whole West, for all are concerned.

"Now, we are not here in any antagonism to the railroads. The very best friends we have in the world are among railroad men. Our personal relations are such, in our homes, with the railroad men, that we are much more apt to be considered as partisans of theirs than as their antagonists. We all, perhaps, have some little interests in railroad properties; certainly we have no objections to having them.

"Again, in what I have to say, and in what we have all said, there is no possible ground for the suspicion of personalities. We haven't you gentlemen individually in mind in what we say. We have to

characterize these rates. We feel very strongly about them. But we don't think of you individually when we do characterize them to ourselves or when we characterize them to you. Indeed, one of the great difficulties we have in our relations with the railroad men is their impersonality. They are so awfully impersonal that we can't get at any individual.

"We should like to get at some individual, and place the responsibility on him, and fight it out with him. But you have, I don't think intentionally, but you have, with unconscious adroitness, evaded the whole issue of personal responsibilities; and, therefore, we have at least this advantage, along with our disadvantages, that, in any criticism we may make, our criticisms are necessarily wholly impersonal.

"Now, why are we here now? Some of these younger railroad men about us may wonder why we are here just now—why this thing has broken out; for a good many of you were in knickerbockers when this injustice was placed upon your statute books, for they are your statute books. We haven't been silent all the time. Of course, as Mr. Barlow said to you, when this thing was imposed upon us, so far as Chicago was concerned, she was prostrate; and, of course, her first thought in the recovery from the fire was of the West, and the Northwest, and the Southwest, where she was already familiar, where she had not been crowded out, or put out, or thrown out. But it wasn't very long until we began to agitate this question. This is not a question that has not been agitated. It is not a new question. It is not a new grievance of ours. We haven't brought down here a spick-and-span new grievance at all. Indeed, it came to the point where, in 1893, we brought the question before the Interstate Commerce Commission and fought it out with you there; and we should have had our remedy—we should have had our relief, but that the question was carried to the Supreme Court. It was on that issue that the Supreme Court made its decision, which was a surprise to most of the country, that the Interstate Commerce Commission did not have the power to enforce a rate against a road, no matter how reasonable the rate was. We waited for that decision until 1897; and now for the last six years, or seven or eight years, we have been pretty much up against it—so much up against it that the shippers of our neighboring city of Cincinnati are so depressed and hopeless of securing any relief that they don't even appear here to-day, though they have for years and years made the same contentions that we do, and are very much more dependent than we are even upon your favorable decision.

"We had to wait for our opportunity. The opportunity has come. It was a little slow in coming, but it has come. It has come, in the first place, through a general awakening of our own city—I am speaking now for Chicago—a general awakening of the mercantile interests to their disabilities. We were growing; we were apparently prosperous; we were getting bigger and bigger. We were somewhat unconscious of the troubles which were growing up about us through the relation of railroad rates and classifications to our prosperity. It was only a comparatively small body of men who saw and argued against this series of rates of yours, or against any of the ingrowing injuries which were sapping the profits of business in Chicago. They were not, these wrongs under which we were suffering, they were not

preventing the increase of our business; they were sapping its profits. And, finally, when that became thoroughly realized, the city became stirred, and we are here to-day, as I said a moment ago, with the credentials of the whole city, the whole commercial and industrial city, and we can have them now, not only upon this question, but upon many other questions of concern to the commerce of that town.

"Then, the other thing which grew, and has come to be an assistance to us, is the great popular feeling throughout this whole nation, finally finding a leader in the President of the United States himself, that there are evidences about us that go to show that perhaps it is not possible to leave the settlement of these issues between the railroads and the shippers to the decision of the railroads themselves in the expectation of universal justice. It became easier therefore, and more hopeful, for us to present our important petition to you; not in the spirit of that movement, not at all—we stand here uncommitted as to that movement—we are not concerned, before this body, with that movement. But we realize that it is a large movement, and that it is attracting attention, not only of the shippers and the people, but that it is attracting the serious consideration of the railroad men, making the railroad men self-inquirers, leading them to question themselves and their own actions, which have heretofore gone on naturally along the simple lines of the pursuit of the railroads' own interests. This has given us the impression that the railroad man has an open mind to-day, especially upon questions of discriminations against districts and cities and people. Whether the railroad men will come to agree with President Roosevelt or not, as to giving the asked-for power to the Interstate Commission, it is undeniable and a most gratifying fact that the railroad men all over this country, the officials, the railroad officials all over this country, are waking up to the fact discriminations must pass out; that they don't belong to real railroading; that they are not necessary to real railroading, any more than they are necessary to real manhood. They deny both. They are a denial of both.

"So that we come here now, under these new conditions, these much more hopeful conditions. All our minds are opening to this grave question, and there is not a railroad man who appears before the committee in Congress, or who is interviewed in any newspaper, from Mr. Samuel Spencer, of your own territory here, to Mr. James J. Hill, or anybody else, who doesn't say that the condition of discrimination that has prevailed must be abolished. It has become the shibboleth of the railroad men themselves; it is your shibboleth; and it is in the name of your own shibboleth that we come here and ask for justice on the question of these rates.

"What is our claim? Chicago, since the beginning, has never asked for any advantage in railroad rates over any other community; never has. Her record is absolutely clear. We come into this present tribunal with clean hands, absolutely clean hands, and we don't want any advantage at this moment. We will accept no advantage now, or at any time, as an answer to our prayer, over any other competing community. We believe that the railroads belong to the people; that they are common carriers, and we don't ask that they shall lose their character in doing us any service.

"We don't even ask for actual justice. We only ask for relative

justice. We don't question your rates as rates; the size of your rates we have never questioned.

"Chicago has never asked, through any public tribunal or organization, that the railroads should make any rate that was not remunerative. We don't want any rate that is not remunerative to the railroads. We want the railroads to prosper. What we ask is relative justice—justice as between us and competing cities. That is what we want, and that is all we want. Make any rates that you please and that will pass the Interstate Commerce Commission, and it will be perfectly satisfactory to us. We have no issue of that sort at all. We want you to make your revenues.

"What we claim is, that we should not have our territory stopped at the Ohio River by any act of yours. It is not stopped, gentlemen, by any other river in America. It is not stopped by the greatest river, the Mississippi. It is not stopped by the far greater river, the Missouri. It is not stopped by the Arkansas. It is not stopped by the Rio Grande. It is not stopped even by the Columbia; and, even in the grocery business, it is not stopped by the Hudson. There are Chicago houses that are selling goods in New York City, groceries that they manufacture themselves. Mr. Sprague's own house sells goods in New York City, and Chicago is selling groceries in New England. As I say, even the Hudson River doesn't stop them. Shall the Ohio, which washes the boundaries of our own State? Upon what theory do you establish our limitations at the Ohio? As Mr. Bartlett has told you, we have gotten over, we have climbed over your wall; but we have done it with a great pack on our backs, and we have carried the pack everywhere in your territory. We are all doing some trade in your section. We have crossed this wall. You have torn up, as it were, the rails at the Ohio River, and we have ferried across. We have gotten in a little, but are we to be there, as we are nowhere else on the whole American continent—are you going to make an exception in your territory? Are we to be as we are not in any other part of our native land? You won't do this exclusion longer, after you have thought it over to a finish.

"Why, the contention and boast of our country is that we have the greatest expansion of absolute free trade ever seen in the world, or that has even been conceived in the world, because, notwithstanding we are a protectionist country, within the oceans, there is absolute free trade. It is the wonder of the economists in all the world. That is true, gentlemen, except in your territory.

"Twenty-five or thirty years ago your predecessors undertook to do what the United States never attempted to do, and never will attempt to do, and which, when any State attempts in the smallest measure to do the United States Government and its great courts immediately rise up and wipe the wrong out, then wipe the floor up with the State that attempts it. They will not allow the absolute freedom of trade within our oceans to be impeded or interfered with or interrupted. But you, who have no authority from any constitution or statute or government, do what the Government itself is powerless to do, and will not allow any other political body to do. You have prevented free trade. We can't trade freely with our neighbors of Kentucky, and Tennessee, and South Carolina, and North Carolina, and Alabama. We are not permitted to have free trade with those people and they are not permitted to have free trade with us. Free trade is

denied, and is denied by your organization, and by your organization alone, in the United States.

"And what in another interpretation, gentlemen, is this extraordinary thing that you do? The whole of your great authorities throughout the country are denouncing rebates. A rebate doesn't seem to have any possible standing in the railway court at present, in the court of your public opinion, in the court that is constituted by your great authorities everywhere. It is denied. But what is, in essence, your action? What is the real essential thing that you do? Why, you give rebates to our New York competitors and our Philadelphia competitors. That is what you do. That is the English of it. That is where it boils down to. It is a rebate. It isn't a rebate handed over to a man surreptitiously—put in his hand behind his back; it isn't done in any surreptitious way; it isn't that form of rebate. But it is to all intents and purposes and in effect a rebate. You give a man living in New York that much advantage over his competitor living in Chicago. Suppose Franklin MacVeagh & Company lived in New York. They might just as well. Suppose we were selling goods from New York against our competitors in New York, and you gave my competitor one rate to Knoxville and gave me another. Now, it doesn't make in principle or effect or in the harm done a bit of difference whether we live in New York or in Chicago. The difference amounts to a rebate to one competitor, and the mere fact that we are living in Chicago doesn't alter the essence of the case. It only alters the form. It only makes it a little unusual to call the difference a rebate.

"Moreover, you are doing another thing. And I hasten to say that this is not you, really. I haven't used the word "you" personally. I don't know who I mean. I wish I did. You are doing another thing. You are making legislators of yourselves. You are assuming to legislate for this country. You are assuming to legislate for the South. You are assuming to legislate for the North and the West. Now, you never were given that authority in your charters. There is no general incorporation act under which a railroad was ever established that had in it a grant of legislative power. But there is no stronger legislative power, there is no more forceful legislative power, than that which you are exercising to-day over our destinies. You are saying to us: 'Gentlemen, you shall come down to the Ohio River with your gripsacks, and you shall then turn around and go back.' And if we still cross it is at the risk of our lives. We are in a hostile territory. We are where we have no right to be. A few of us get over there; and those of us who do get over at all scarcely get back with our lives, and never with our skins whole, as commercial men. You know that that is pure legislation—the purest legislation in the world. And what are you? You are common carriers. That is all you are, and that is the greatest and most useful thing it is possible for you to be. If you try to be legislators you will be a failure in that; if you try to be, as you are, common carriers, you will be great and big, as you ought to be; but as legislators you will be little all of your lives.

"Gentlemen, you were not cut out for legislation. You have no right to legislate, and your legislation in the end will come back upon your heads. It is the most wrongful thing possible to yourselves that you could do. You ought to be common carriers, which means that you ought to carry commonly and equally for all the peo-

ple. And I tell you that there is no question under heaven that your being returned to common carrying is to be the result of the present popular movement in this country. And I believe—I believe as much as I believe that I am standing here—that in the end the greatest willing factor in reducing the railroads to their legitimate business of common carrying will be the railroad men themselves. Common carriers is what you ought to be and that is what you must be in the end, but that is just what you are not in this case.

"Therefore I appeal to you for the 'square deal,' gentlemen. That is the appeal of the West. It is for the square deal that I appeal to you, and for what is almost the same thing under another of these vastly popular terms that are becoming of the greatest force in the world, I appeal for 'the open door.' That is what we men are here for. We are here to ask you for a 'square deal' and 'the open door.' Give us those and all will be well, for all will be just."

Mr. TOMPKINS (commissioner, St. Louis Traffic Bureau):

"The individual lines comprising these associations have been asked many times to give us relief from existing conditions and replies received from traffic officials acknowledge the injustice of the present adjustment of numbered class rates between the western markets and points in the Southeast, but they have invariably asked us to put off the day when fair and equitable numbered class rates shall be established from these cities.

"The last time this matter was under consideration was at a meeting at St. Augustine early in 1903, and after making a number of changes in the adjustment of rates along the Mobile and Ohio Railroad a committee from your associations requested that we allow the matter to rest and not insist upon a further consideration of the subject at that time.

"If it was in the power of the interested lines to remove the discrimination existing in the Aberdeen group, we can not see why it does not lie in your power also to remove this discrimination at points farther east.

"It has been conceded that the rates as established at the present time were made for the division of traffic, the numbered classes being adjusted so as to move the manufactured goods from the East and the lettered classes being adjusted so as to move the products of the soil from the West, but the conditions have entirely changed since this adjustment was made, and to-day the manufacturers in the West feel that the time has arrived when this discrimination should not be allowed to continue further and that the rates should be fairly and equitably adjusted from all markets, which would permit their merchandise to be marketed in the Southeast upon its merits.

"The largest and most important markets on your rails are in the West and not in the East, and in the face of this you ask these markets on your own rails to pay a premium for doing business in competition with markets which are not on your rails in southeastern territory, where you absolutely control the situation.

"We are called upon to equalize freights on boots and shoes with Boston in the Southeast, which amounts to 41 cents, say, at Dawson, Ga., so that our houses are forced to give away part of their legitimate profits on account of this unjust discrimination in the rates.

"The law says that the rates must be reasonable and that there

shall be no unjust discrimination as between localities, and we do not believe that you can defend the present adjustment as between the eastern and western markets to the Southeast, as it is well known that the present rates were made to control the movement of certain traffic along certain lines, and as you have frequently acknowledged that the present adjustment is unreasonable and unjust to the western markets.

"The census of 1900 shows that the five States of Missouri, Illinois, Iowa, Minnesota, and Wisconsin contain 19 per cent of the factories and 16 per cent of the manufacturing capital, and the increase in the capital invested in Missouri from $103,000,000 in 1902 to $145,000,000 in 1903, an increase of $42,000,000, indicates how rapidly the manufacturing enterprises have increased in this territory since 1900.

"We think the time has arrived when you must recognize the injustice of the present adjustment of the rates between the western markets and the Southeast, and we now ask that you do not further delay action in this matter, but readjust the rates from St. Louis so that the present discrimination against our market will be removed."

Mr. SPENCER (treasurer Hamilton-Brown Shoe Company):

"The arguments of our Chicago friends have so thoroughly covered the case, which would apply with equal force to St. Louis, that I feel there is very little left to be said in the matter. When the rates of 1878 were created—were adjusted—St. Louis and Chicago were both jobbing centers—mere distributers of the manufactured product of the eastern cities and New England. Conditions have radically changed, and to-day, instead of being distributers of their products, we are in large measure distributing our own. In the boot and shoe industry in St. Louis we manufactured 75 per cent of the 45,000,000 sold from that city in 1904, and that ought not to be lost sight of in this adjustment that is before you. We simply ask that we be put on an even keel with the eastern markets. Consider us as manufacturing centers rather than jobbing centers. The crime perpetrated by your ancestors ought to be corrected by their offspring. It is your opportunity, and we will thank you to help us out."

Mr. SIMMONS (president Simmons Hardware Company):

"I have very little to add, because the subject has been thoroughly well covered. I want to emphasize particularly what has been said by Mr. Bartlett, because he really has said what I should have said, in large part, had I been called upon earlier. The conditions, in so far as they relate to the business in which the house he represents and the one I represent are engaged, have entirely changed since we first entered that business. I can remember distinctly that, about forty-nine years ago, I was put to work to empty five casks of files made by W. S. Butcher, of Sheffield, England. They came wedged so tightly that I had to call help to start the first bundle. Within a short time past the house that I represent has shipped on a mail order to that same city two full carloads of machine-made files, made in the United States, that can be and are sold there in competition with the English files very successfully. Now, the same conditions of change have occurred as related to the eastern markets and the West. When we began to manufacture hardware in this country they were made in New England. Their patterns were taken from the immigrants, who brought across the water, on their shoulders, their forks, their rakes,

their scythes, their hoes, with their bundles of personal apparel, because there were none in this country, and for a time New York and New England was the manufacturing center for those goods. But that has long since changed, so that the house I represent has shipped within the past year from one to two million dollars' worth of manufactured products that were made in or around—within, I suppose—10 miles of the city of St. Louis. One single item alone: We have shipped 100,000 stoves made in St. Louis, a part of which came to this New South. We have shipped thousands of carloads of goods that were made within a radius of 300 miles of the city of St. Louis; so that the manufacturing interest of this country, so far as it relates to our business, is not in New York or New England any more.

"The proportion of the tonnage that comes from New York and New England, in the hardware line, that is distributed in the great agricultural and cotton-growing regions of the West and the South, is made in the West and in the Middle West, and, consequently, there is no more reason for the rates that were made so long ago continuing to exist.

"I take it that the men who have spoken to you this evening represent, perhaps, the broadest, the most intelligent, the most energetic, and the most successful commercial minds, commercial men, and commercial houses that the world has ever known, and St. Louis is only too glad to join in such company and ask for itself that it shall be treated as Chicago shall be treated; that our interests are mutual; that we have been discriminated against, and that the matter of rates is the matter of competition, and that competition is the life of trade; and when you come to have that competition handicapped, as it is, by a matter of discriminative rates, it is a most serious matter and difficult, if not impossible, to overcome. The house I represent sells its goods in every civilized nation on the face of the globe, and it may be a matter of interest to you to know that we have made less money in the past two or three years in this territory that we are now pleading for equitable rates in than in any other part of our country, but it is all because of the handicap we suffer and the freight allowances we have to make.

"We ask no favors whatever. St. Louis is perfectly willing to have you put Chicago on the same basis we are. If it is a little farther from Chicago than from St. Louis it makes no difference. But give us competition which will enable us to go to the merchant and say: 'We have the same freight rates as the competition which you bring before us as being that which we have to meet.' And it may interest you also to know that the city of Chicago and the city of St. Louis distribute through their jobbing hardware interests five times as much hardware and its kindred interests as is distributed by Boston, New York, Philadelphia, and Maryland through their hardware jobbing interests. We ask you, then, to give us a new deal on this proposition. As I take it, you have been wearing old clothes for the last quarter of a century, and they are out of date; they are worn to seed; they don't fit the occasion; they are not modern, up-to-date; and we want, if you please, that you will recognize the fairness of our claim by giving us equitable rates to this magnificent promised land of the New South."

Arguments submitted by representatives of Chicago and St. Louis shippers before a mass meeting of executive officers of interested transportation lines, at the Waldorf-Astoria Hotel, New York City, February 23, 1905, in favor of a readjustment of rates from Chicago and St. Louis to the Southeast.

Mr. BARLOW:

"You have before you the records of the meeting held at St. Augustine on January 18 last. You therefore occupy the vantage ground, as you are aware of the position of the West, while our information as to your point of view is based wholly upon your previous attitude. We believe you are favorably impressed with the reasonableness of our claims, else this second meeting might not have been deemed necessary. Our hope for relief is in the knowledge you are men of progressive minds, and therefore fully appreciate the complete change that has taken place in commercial and transportation matters, that it appeals strongly to your inclinations.

"We covered the ground quite fully at the St. Augustine meeting, and feel our position is conservative and reasonable. In these remarks we shall necessarily stand convicted of repetition, yet we hope to be able to place before you the same arguments, only a little more explicitly stated. It may be only the same song pitched in a different key and with new variations.

"Gentlemen, this proposition will be admitted as an undeniable fact. Under the present adjustment of merchandise rates, the East *v.* the West, the western producer or dealer must either sell his goods cheaper than his eastern competitor or refund the difference in the rate. If the southern merchant can buy any given commodity of the same standard value in the East at the same price as in the West, and pay, say, $25 less freight from the East, he naturally goes East. This is a self-evident fact. This is the condition, it appears to us, you have created and are now maintaining. We admit these conditions exist to some extent between all centers of distribution from which the measures of the rates vary, but in all such cases there must be, we think, substantial reasons therefor that appeal to the sense of justice and fairness, not only from the transportation point of view, but the shippers'. Our contention is, there are, so far as we can see, no substantial reasons for the dissimilar adjustment, the East *v.* the West (in this case), that now or in the past met the approval of all the transportation companies nor any portion of the western shippers.

"The point is raised, and quite naturally, that the proposed change may work loss of revenue to the carriers. It does not appear to us this point is well taken nor sustained, for the following reasons:

"First. The basis of the measure of your earnings on business from the East to, say, Atlanta is, substantially speaking, your earnings from Virginia cities. The all-rail distance from Richmond to Atlanta is 550 miles. Now, the distance from Evansville to Atlanta is 446 miles. Shall we contend the cost of transportation from Richmond, 550 miles, is 17 per cent less than the cost from Evansville, 446 miles, which per cent practically represents the aggregate difference in the Evansville and Richmond rates? We think not.

"Again, the distance from Richmond, Va., to Montgomery, Ala., is 725 miles, and the distance from Evansville to Montgomery is 460

miles, while the rate from Richmond is, substantially speaking, in the aggregate, 14 per cent lower than from Evansville. Shall we contend there is a loss in transporting property 460 miles for substantially the same rate as is charged for 725 miles? We think not; but, on the contrary, we believe it to be a fair assumption that the profit to the carriers is materially increased, at least in proportion to the less expense of transportation. We do not wish this comparison to be taken as in any way justifying the charging of the same rate for this lesser distance than for the greater, nor committing ourselves to that policy as being equitable or just in this case.

"Now, assume, if you please, a reduction of the rates from the West ultimately leads to increasing the business of the South with the western cities (we are frank to admit we believe it will if you gentlemen cease legislating in favor of the East), what will be the result? You would simply be hauling the same business from, say, Evansville to Atlanta, 446 miles, for substantially the same rate as now received from Richmond, 550 miles, and from Evansville to Montgomery, 460 miles, versus Richmond, 735 miles. Can that condition be properly termed a loss of revenue? We think not. If this point is well taken, and it so appears to us, must we further combat what seems to us to be, up to this time, a persistent disposition on your part to so adjust your rates as to practically determine not only the point of origin but the point of delivery to your lines? We do not believe this condition appeals to your sense of justice.

"Now, let us consider the other point of view. Say, if you please, a reduction in your present rate from the West would reduce your revenue on such business as you are now carrying from that territory, with the distinct understanding—and we state it as a fact—that the measure of your rate from the East fixes the measure of our profits, do commercial conditions, the cost of transportation or production, justify you in placing this additional burden upon the industry of the West? Is it just and reasonable, all things considered? We think not.

"Gentlemen, we have faced this proposition from every point of view constantly since November, 1893, and, are frank to confess, hold the same opinion now as in 1893. We watched and noted the effect of the present adjustment eight years with the Evansville and Terre Haute Railway, one and one-half years with the General Paper Company (who, I may say, as evidencing their interest, handle over 3,000,000 tons of freight per annum), and for the past three months in our present close relation to the shipping interests of Chicago and, I may say, the West. In all these relations on both sides of the question our opinion has not changed. I have always contended, and do now, that in our judgment the adjustment is unfair, unjustifiable, and indefensible.

"During my eight years in railway service, that brought me in touch with this question, I never heard anyone attempt to justify this adjustment, except on the grounds of expediency, based wholly on alleged transportation necessities, existing twenty-seven years ago.

"I can go further and say that the Southern Railway gentlemen with whom I came most in touch always acknowledged the adjustment to be unfair to the West and indefensible in equity.

"Gentlemen, we all have a dim recollection of the agreement of

September, 1878. We need not refer to it further than to express our conviction that although the actual form and substance of the agreement as an agreement may have passed into history, its spirit is still, we think, one of the controlling factors in the rate adjustment in the South. Let me illustrate by comparison:

"It would appear the ocean and rail differentials were increased in 1894 and at some time the arbitraries originally fixed, Boston over New York, were largely done away with and the New York rates applied. While these readjustments, somewhat more favorable to some parts of the East, were being made, it would appear the arbitraries, Chicago, viz, 20–18, etc., and St. Louis, 10–10–8, etc., over Louisville fixed in 1878 were withdrawn and practically the sums of the local substituted, probably at the time the rates from Louisville were reduced. This action, while modifying the Ohio River rate, did not, to any particular extent, change the through rate from Chicago, which remains to-day substantially as fixed in 1878. In 1879 the difference in the rates New York *v.* Chicago all rail to Atlanta was 1.17, 2.13, 3.18, 4.9, 5.10, and in 1905 1.21, 2.18, 3.11, 4.4, 5.5. While these comparisons show some variation, it also gives color to the belief that the conditions created by the rate adjustment of 1878–79 exist to-day to a greater or less degree.

"We know something of the rate wars in the southern territory previous to 1879. You are to be congratulated, from a railway point of view, that you have had but one serious conflict since that date. I refer to July, 1894, after which you returned, so far as this complaint is concerned, to substantially the rates previously and at present in effect, still holding to the spirit of the 1878 agreement, at least in respect to the adjustment—the East *v.* the West.

"Gentlemen, I state (without fear of contradiction from either side of this question) it to be your desire to adjust your rates fairly. Unfortunately, in 1878–79, some of you, I fear, found yourselves in the position of the man who, after joining the church, stated he had resolved to lead the life of a Christian, so far as it was consistent with his other duties.

"Gentlemen, the agreement of 1878–79 was a makeshift—a compromise. As a compromise it was like the man who would sleep on cotton sheets, while his wife preferred linen; so they compromised on linen. Many of you were perhaps compelled to work an injustice to the West, and thereby subsidize certain independent factors that do not, we think, exist as absolutely independent factors to-day. The present situation, from both a railway and commercial point of view, is not to be compared with 1878. Everything has changed except, substantially speaking, the relation of rates, the East *v.* the West. Why should not this (we believe unnecessary, and certainly harmful) condition cease to exist, particularly in view of the fact that many of the former unruly factors have since that date come under reasonable control, eliminating to a large extent the evident selfish motive or interests that probably originally dominated the situation?

"Gentlemen, it has been said that if all lines had an equal or substantially equal interest in the West as in the East, and vice versa, as most of them have, the cause of our complaint would be removed instantly. Gentlemen, we say with all frankness, the day has passed when the business interests of the great West must be made to serve

the apparent unjust demands of one or two comparatively minor interests. I say minor interests because one almost fails to discover them. If you concede our position, and the result is to augment to some extent the business of the western gateways, is there really any loss finally? As a last analogy, where do we find the majority of the surplus earnings of the New York, Chicago and St. Louis and the Louisville and Nashville? Are all of you indifferent to the success of the Mobile and the Mobile and Ohio?

"One might safely say the best of relation exists between the Seaboard Air Line and one of the great and good friends of Chicago and St. Louis.

"Gentlemen, our suggestions seem to us most reasonable. It is undeniable that to some of the railway interests represented here, our position must appeal with irresistible force. We believe but few of you can longer remain indifferent to the just and reasonable requirements of a united West, and we *are* united to-day upon this question. Gentlemen, we find this spirit of harmonious justice breathed into the very foundations of your agreement. Your general commissioner, in his remarks at your meeting, September 5, 1878, quotes the Hon. Charles Francis Adams, jr., as saying, 'No person should allow his selfishness to control his interests to the injury of others or the community in which he lives.' Gentlemen, do not most of you live in the West, either in person or semiofficially?

"The above is in line with the suggestions offered by us at St. Augustine in regard to changed conditions of ownership and interests. They impress us as bearing strongly upon the case from your point of view, although it may not touch the justice of our claim. One more point, please: Why was the adjustment made originally? I would not touch upon this phase of the subject had it not been raised with some of the members of our committee at St. Augustine. Now, one of our contentions is that the present relation of rates, the East *v.* the West, is in its effect substantially as originally fixed. While the aggregate difference in the all-rail rate to Atlanta, New York *v.* Chicago, is to-day somewhat lower, the difference on first and second class is greater than in 1879. In other words, the relative adjustment indicates, and I might say proves to us, as previously stated, the spirit of the 1878 agreement is still to some extent a controlling factor in the situation as it exists to-day.

"Gentlemen, I have read and studied that agreement and the proceedings of all the meetings subsequent thereto. There had been rate wars. Not an unusual event for those days, when the unreasonable demand of forty or fifty lines had to be considered and many of them sudsidized, even though it worked, as we think it did in this case, a rank injustice to other lines and almost ruin to the commercial interest of large territories. There was nothing extraordinary about these wars, nor were they peculiar to the South; they occurred between Chicago and Council Bluffs and the Ohio River, with or without water competition. After one of these eruptions you made an agreement. You all know about it, and its effect upon the transportation problems of that day. We know and appreciate its effect upon the commerce of the West, then and now. These wars worked out the usual and natural result—the survival of the strongest—in fact, they were the most potent factor in bringing about the condi-

ns that exist to-day, conditions we claim that render unnecessary ontinuance of the present adjustment.

Gentlemen, we have made a fresh study of that agreement during past three months and its effect upon the business of the West. had previously studied it from a railway point of view. We ld not then, nor can we now, get away from the fact to us clearly parent, viz, that the rates on the numbered classes were and are l made higher from the West than from the East, for purposes, ong others, the securing to the eastern lines the transportation the merchandise traffic. Changes in the agreement in 1885, 1887, l 1892 introduced suggestions of other methods, but only in line, seems to us, with the spirit of the original plan. We are not nindful of the claim that the ocean and rail and the all-rail rates m New York should bear a reasonable relation to each other; uld not also the rates from the West? It will be borne in mind, take it, to be not the business of New York, but the business of South you seek. Your lower rate from the East than from the st to Atlanta does not fix the value of consumption in the South, necessarily increases it, but it does fix, to a large extent, either point of origin or the measure of profit.

Do you seek only the boots and shoes, hats and caps, etc., shipped m New York, or the same articles shipped to and consumed at anta? New York might ship tons of these articles and yet not a nd to Atlanta. As an abstract traffic proposition, is it not just l reasonable to permit the buyer to (as far as possible and without easonable restraint) enjoy the largest field of commercial competi-n, unrestricted by unjust and discriminative rates? Does not and l not this method most surely and quickly develop the commercial erests of the South? We think so.

Gentlemen, whether this view of the case is right or wrong the ct is the same. The West has outgrown the adjustment. It now nands the right to profitably extend its area of successful opera-ns in all branches of trade. We came to you because you control future in a territory rich in possibilities for the West. We ask to deal justly with us, and to undo those things which are harm-to our successful development.

We believe the time is auspicious and that the results will prove imately to the best interests of all."

Mr. TOMPKINS:

Mr. Chairman and gentlemen, I don't think I can add anything what Mr. Barlow has said in this matter; but so far as our people St. Louis, and I think in Chicago, are concerned, this matter has n up for over two years, and we think that it is time that we eived some relief from the present conditions. Two years ago, at ir meeting in St. Augustine, you fixed up the adjustment along the of the Mobile and Ohio Railroad, and I feel certain it didn't t you anything in the way of revenue, and I don't think it would t you anything to fix up this thing farther East. I can't add thing to the arguments that have been presented so far, and I h to give place to Mr. C. H. Spencer, first vice-president of the rld's Fair, whom I would like to have tell you something of the elopment of the West."

Mr. C. H. SPENCER:

"Mr. Chairman and gentlemen, I didn't know of this meeting until about a half hour ago, and I feel wholly incompetent to say anything in regard to the question at issue between the merchants of the West and the railroads of the East, as I understand it. This proposition, so I have been told, is something like this: That a New York jobber can ship his merchandise to those points in the South, for a distance, we will say, of about 600 miles, for the same rate that a shipper in the city of Chicago or the city of St. Louis can for 300 miles. Whether this is a correct statement of the case or not, I don't know of my own knowledge. It is a matter I have given no thought at all, and, to be very candid with you, not being in the shipping business at the present time, I don't know that those conditions exist, so far as the city of Chicago and the city of St. Louis are concerned, because they have a pretty wide-awake lot of merchants in both of those cities, and if those are the conditions, I am quite surprised that they have stood idly by for the last two years, without making some sort of protest.

"Now, there may be reasons why the rates of freight should be 50 per cent less from New York to points in the South than from Chicago and St. Louis. If that is so, it seems to me the merchants of those two cities have the right to know the reason why. I have always been one of those men who believe that the interests of the merchants and the interests of the railroads are identical; that the most intimate relationships should exist between them; the best of feeling should exist; the prosperity of the one depends upon the prosperity of the other.

"I didn't know that I was going to be asked to say a word until a few minutes ago, when Mr. Tompkins asked me if I would not say a few words in regard to the development of the great Southwest. I have no fixed speech to make, and I am going to ask your indulgence for just a moment. I don't know of any better way I can illustrate to you, gentlemen, the steady, rapid, and wholesome growth that is going on in the West than to tell you what is going on in the city of St. Louis, because there I can speak by the card. That has been my home for the last thirty years. Those gentlemen in St. Louis, with myself, had some apprehension as to the result of the great exposition, which closed, as you know, last December. We didn't know in what condition we would be left. But to give you some idea, during the month of last January—the month after the exposition had closed—the car-line system of which I happen to be a director and know something about its operations—to give you an idea of the benefit, if we can call it a benefit—as the result of the exposition, the gross receipts of the one car line with which I happen to be connected were $40,000 more during last January than the January previous, when we were in the very midst of the building of the fair, and perhaps when we had as many strangers in the city of St. Louis as we had at most any time near the close of the fair. The bank clearings during the month of January showed an increase of about 12 per cent over the previous January. The post-office receipts, I think, showed something between 9 and 10 per cent increase over the previous January. I simply speak of those things to show you the very healthy condition that exists, in a commercial sense, in the city of St. Louis. And, incidentally, I might add that we fear we are on the eve of a real estate

boom. I think, the week before I left St. Louis, a corner on Broadway sold at $20,000 a front foot, which is a pretty good price to sell at in a western city. There was also another small corner sold with it, and the development of that block will mean the expenditure of two and a quarter millions. All these things, gentlemen, indicate a most healthy condition, and I think the conditions in the city of St. Louis simply represent the conditions, the progress, and the growth of the entire Southwest. You gentlemen who live in New York, and whose interests are here, identified with this wonderful city, will perhaps be surprised to know that in two or three counties in Missouri we have taken $12,000,000 out of the ground, and we have only scratched the surface.

"We are going to be fair. Speaking for myself, and I think I represent the sentiments of every business man in St. Louis, all we want is fair treatment. We can stand to have one hand tied behind us; we can stand some kind of handicap; but we don't want both tied; and if you will give us some sort of a chance, some sort of fair competition with them, we will treat you fairly. And I don't know that, in the end, you will lose anything, because in due course of time the West will be able to stand alone. Even now in the State of Arkansas some of the bankers are writing to St. Louis merchants and wanting to know if they can't use some money. That is about the condition of affairs out West. We have all got money and we have got a good deal of energy. We want to be on the most friendly terms with the people of New York. We come down here to spend our surplus revenues. We stay at home and work hard for six months and then come down here for two weeks and spend what we have been able to save. What I would like to see, Mr. Spencer, touches St. Louis, and I believe in this wonderful city. I wish that he would say that St. Louis and Chicago will receive proper treatment. I believe he is able to do it. I think we are meeting you halfway. I believe we are meeting you halfway. And I hope that will be the result of this meeting, and that it may, in due time, benefit all of us.

"I thank you for the time that I have consumed."

Mr. STRONG:

"For the purposes of brevity I will come to the point at once and say that what we of the West ask of you is an even show with our competitors—the East—in our efforts to promote trade in the southeastern district. We ask this because we think it is simple justice to ourselves, and we ask it all the more because it will work no injury to the East. As long as we have no advantage over the East, which we don't ask for, the East can not complain. And we feel, too, we believe that it will work neither injury nor detriment to yourselves. On the broad basis of principle, of course, there is no injustice in righting what is manifestly wrong, and in the matter of self-interest we believe in the ultimate allotment of revenue you will not have suffered, if, indeed, you do not gain, because of the fact that the railroads running into the Southeast from the East and from the West, respectively, are so closely allied in point of ownership.

"Now, the basis of the present existing rates, or relatively the present existing rates, may have been all right in 1878. That basis was made for a proper rate on farm products, and, incidentally, on the

other hand, they, perhaps not of intent, gave the West one in the solar plexus on the matter of merchandise rates. That basis may have been all right, I say, in 1878, but we think it is all wrong now. The West, the Middle West, in 1878, viewed from a merchant's standpoint, may perhaps properly have been considered nothing more than a lusty infant, as compared with the East; but to-day the West is a full-grown, husky adult, and it asks for its own. It wants what it is entitled to, nothing more, but just that; and it doesn't think that a part of its heritage is this discrimination of rates into the Southeastern territory still being maintained against it simply because its daddy was considered a better farmer than a merchant in 1878. I heard a little story a few days ago. The gentleman who told it to me said it was so old it was really new, and I will tell it: An Irishman's mother-in-law died. A few days afterwards a friend met him and he said: 'So, Mike, the old lady is dead. What was the complaint?' And he says: 'Sure, there was no complaint at all; everybody was satisfied.' Now, what we would like for you to do is to bury the old lady; bury the old lady that has been disturbing our domestic peace in our domestic family in the West every time we try to get into the Southeast for business, and I think you will not be long in finding that everybody is satisfied—the West and the East and yourselves. Now, it is not, perhaps, for us to tell you exactly how you will accomplish the old lady's interment, whether you will raise the rates from the East or lower them from the West, or a little of both; it doesn't matter particularly to us how you do it, if you will only do it. And in all seriousness and in all earnestness we ask you to do it."

Mr. SPENCER:

"The cases presented and made up by the commissioners of St. Louis and Chicago leave little to be said by those of us who have these burdens to bear. You are all entirely familiar with them, and I can but emphasize what the commissioners have said, and those before me. We know how irritable it is to have these little deductions made every time we receive remittances from our customers in the Southeast, making us equalize the difference, this difference between Boston and New York and St. Louis. It is a perpetual tax on the business. That we should have gotten along as well as we have is simply an evidence of the hustle and purpose of the West. But the time surely has come when these differences, these unequal differences, should be wiped out. Make us feel that you appreciate the business of the West, where you must look in future for your increase in revenue, as you do that of the East. That is all we want; put us an even keel with our eastern competitors and we will hold our own."

Mr. SPRAGUE:

"It would be hopeless for me to attempt to go into the details of the situation, as they have been already gone into more thoroughly and accurately than I could. But I might say, for the grocery interests of Chicago, that while we are doing some business in the Southeast, and will continue to do it, it is done on an unprofitable basis, comparatively speaking, and we think that it is not just. We are no longer only distributors; we are producers and manufacturers, and we think we ought to be placed upon an equal basis with the manufacturers and producers of other sections of the country

in regard to the Southeast. We don't want any advantage over any other section of the country. That is not what we are asking for. All we ask is that we may approach our customers and allow them to buy in an open market without being discriminated against by rates. That is all I have to say."

Mr. SPENCER:

"I neglected to state that when this tariff was put in operation, in 1878, St. Louis was simply a distributing center. We manufactured practically nothing in boots and shoes. I have the honor to represent that interest in St. Louis. Possibly 1 per cent of the total amount distributed was made there. To-day, twenty-seven years later, of the total sold in boots and shoes from St. Louis, between forty-five and forty-seven millions, more than 66⅔ per cent are manufactured in St. Louis; so that old plea that we are merely a distributing center—that we bought our goods in New England and in the eastern markets generally and distributed them from there—is no longer of any force and effect against us. We manufacture to-day the goods we formerly bought in the East."

Mr. ROTH:

"Representing the wholesale grocery interests in St. Louis, I hear so much about the freight rates not being changed since 1878. I have to state that since 1878 the idea was, up to that time, there was hardly a cannery west of Indiana to supply the trade, and the merchants in St. Louis drew their supplies from the East. The consequence is they now draw their supplies from the West. Their manufactures have greatly increased; and, above all, up to five years ago, coffee came by way of New York. Last year the coffee that was entered in the New York port was 5,000,000 bags; New Orleans received, through her port, 1,250,000 bags, while Baltimore, that has been a port of entry almost since the country began, received 203,000 bags.

"We come to you and ask you merely to put us on a parity with our competitors in the East, asking for equity, and nothing else; and if you will do that it will be very much appreciated, and it will put us on a par doing business with our eastern competitors."

Mr. WAIT:

"When this matter was referred by the traffic officers to the executive officers of the roads, we asked for this second hearing in order that we might meet the men who are going to settle the question and ask them for the square deal. That is what we are here for.

"Now, when the hardware interests originally raised this point with the southeastern roads a good many years ago we were told quite frankly that we had no right to bring manufactured goods from New England to Chicago and then sell them into the Southeast; we had no right to do that. Now, assuming that a commercial handicap is the reason why there should be a transportation handicap put on top of it, assuming that that was a good argument when the adjustment of 1878 was made, or when we raised this question, it has ceased to be an effective argument now. I think we have all (at least I have) looked upon Pittsburg as the center of manufacturing in the United States. I was surprised to receive, just before I left Chicago, a little pamphlet, which I presume is a real estate advertisement, entitled, 'Chicago as a manufacturing center;' and in it I find figures to show that the total capital invested in manufactures in the Pittsburg

district is less than one-third of the capital invested in manufactures in Chicago, and that the total value of the output of the Pittsburg factories is less than one-fifth of the total value of the output of the factories whose headquarters are in Chicago."

Mr. HARAHAN:

"That is outside of steel."

Mr. WAIT:

"No, sir; that includes steel. I can explain the difference in the total capital and the total value perhaps, one being three times and the other five times, by referring to steel, that the Pittsburg output is largely steel in its unfinished condition, not the finer manufactures. In Chicago there is a much larger proportion of the finished commercial product.

"Now, to bring that down to the hardware business specifically. The hardware business is perhaps the last to feel that increase of manufacturing in the West. There was a time when almost everything handled by the hardware interests in Chicago and St. Louis was brought from the East, or from abroad. To show what the condition is in our particular line, at our warehouse last month we unloaded there 262 carloads, at our North Water street warehouse. Of that 133 cars, or approximately one-half, originated in the immediate vicinity of Chicago, 98 cars originated in central traffic territory, and only 31 cars, or about 12 per cent, originated east of the western trunk line termini. That shows where the manufactured hardware goods come from now.

"I think all of the gentlemen on this side of the room are holders of railroad securities. We therefore watch the railroads from a business standpoint, and there is to us one unexplained thing in the present tariff of the railroads, and that is where they go for their merchandise business. Now, let me illustrate: Our concerns receive an order for goods for factory shipment; they take the prices at the various factories and add the freight rates, and fill that order on the cheapest combination; the factory where the price and the rate, added together, make it cheapest is where the order is filled. Now, that seems to us good business. Now, we see the railroads doing exactly the opposite. For example, Mr. Hill still continues to come clear east of Buffalo and take goods that his Burlington road could haul out of Illinois. Mr. Stubbs leaves canned goods in storage in western Missouri and comes up into Maine for it at the same rate. Now, we can't see the business side of that proposition. Now, the southern roads, collectively, are doing practically the same thing. They are going long distances for goods which are now manufactured nearer the consumer. Couldn't they make more money by ceasing to discriminate against the nearer goods? Couldn't they collectively do that? Don't misunderstand me. I am not standing here telling you how to run the railroads, but we have never had an answer to that proposition, and we simply ask that, in deciding this question, you give that phase of it due consideration.

"In our dealings with the South we run up against, daily, these two things: Either our customer pays a higher freight rate than he would pay from some other point—we sell the goods just as cheap, we may sell them cheaper, but when he pays his invoice and pays his freight bill there is a difference—either he has to stand that or

we have to take it off our invoices. Now, we don't believe that when you gentlemen consider the changed conditions you can make up your minds that you really have the right to put us in that situation. And we believe, and we ask you to seriously consider, if the southern roads, collectively, can not really make more net revenue by ceasing to hinder the movement of business in what is now its natural channels."

Mr. SHAPLEIGH:

"It is rather embarrassing to be placed at the tail end of the discussion at this time, because almost all of the points have been very well covered by one or other of my predecessors. The situation appeals to me from the standpoint of a layman as far as the railroads and kindred interests are concerned. The conditions that existed in 1878, which may have warranted the placing of these different rates from the East, and from Chicago and St. Louis, are no longer present, and the development of the business interests of Chicago and St. Louis demand now a readjustment. Speaking for the hardware trade, I will say that St. Louis is the largest hardware market in the world. St. Louis and Chicago combined—Chicago is the next—the two combined probably sell one-third of the hardware marketed in the United States. Now, we have been going after the southern trade, as far as we can, for some years. We travel 11 men in that district. We spend every year—our house individually—about $17,000 in that section in traveling expenses. The St. Louis hardware houses together will spend probably $45,000 in that section. Now, I believe all your interests lie in that section. As far as hardware is concerned, I know we ship more—Chicago and St. Louis—into that part of the country than any other section of the country. Does it not seem fair that you should take care, equitably, of the people who give you the most tonnage?

"Taking, again, the conditions that existed in 1878 as compared with what they are now, as Mr. Reed has said, the manufacture of hardware has changed so in that time that there is absolutely no similarity. The greater per cent of all of the hardware is now manufactured in the Central West from what you might term Chicago and St. Louis points. Now, we feel strongly about this, because it is a large part of our business. The goods we sell into that territory are sold with a large handicap. The equalization of freight that we have to make is a very serious drawback, and we think it only fair that, where our haul is no longer than the haul from the East, our freight rate should be no larger.

"We feel very confident, in leaving this matter in your hands, that we shall receive perfect justice, and that is all we ask."

Mr. PIRIE:

"Mr. Chairman and gentlemen, the dry goods situation was very well covered by Mr. Farwell in the meeting in St. Augustine. The three big cities of Chicago, St. Louis, and Cincinnati come here to ask you for a fair readjustment of these rates. We don't come to demand anything, any advantage over anybody else; we don't come to beg, because we think we are justified in what we ask for. Mr. Farwell told you very well how the change in the location of the manufacture of the kinds of goods we handle has made the dry goods situation very different from what it was at the time the present classification was adopted. We have our men in the Southeast selling goods. They

don't sell many; not nearly as many as we should. The rates have to be equalized, which means that the profit on the goods has to be reduced an amount equivalent to the difference in the rates. I think the southeastern merchants are more and more becoming aware of the size of the stocks of dry goods that are carried in Chicago, in a jobbing way. They are bigger than in New York. They are bigger in St. Louis than in New York. And we think, in fairness and justice, you gentlemen should reconsider those rates and put us on an equal basis with the other cities—we don't ask any advantage—and then let us look after the case ourselves after the rate situation is adjusted."

Mr. MICHAEL:

"As far as the dry goods interests are concerned the sources of supply in the last twenty or twenty-five years have materially changed. I believe the sources of supply of dry goods have changed more radically even than the center of population has changed, that is, drifting westward. The rates applying from Chicago and St. Louis into the southeastern territory have been dwelt upon, and I think you gentlemen are fully aware of the situation; but I wish to emphasize the fact that in St. Louis and immediately surrounding territory, St. Louis particularly, representing men's and women's wearing apparel, that has greatly increased, and the goods we handle into the southeastern territory, I find, are largely made nearer St. Louis to-day than they were twenty or twenty-five years ago. I don't believe that fact admits of controversy at all. The goods are made immediately in the vicinity of St. Louis, being 500 miles nearer the consumer in the southeastern territory than the New York, Philadelphia, or Boston jobber; and then we are confronted with a tariff sheet that practically wipes out that 500 miles and puts us a thousand miles away. We don't believe that the tariff that compels us to pay within 500 miles, say, of Birmingham, compels our customer to pay at Birmingham, on a haul of 500 miles, after we have brought them to within that distance of him, as much as he has to pay to bring them 1,000 miles, which he is, in all relative aspects, doing to-day, is just and right.

"The dry goods business, for its development and consumption, largely depends upon the manner in which the goods are pushed. We know what advertising does. It creates a demand. I don't believe there is any force at work so great in any line of goods that enlarges consumption as it is in dry goods, in the dry goods line, when they are properly pushed. Now, no matter what forces we put to work in a certain territory, we are constantly confronted by an adverse tariff sheet. I don't believe an adjustment of that tariff sheet would to any appreciable extent diminish the goods that are shipped from the East into that territory; but I believe an adjustment of that tariff sheet would largely increase the amount of goods that are shipped into that territory from the West. If you get two salesmen, with attractive lines of merchandise, at a merchant, they are very likely to sell that merchant more goods than if only one salesman is inducing his business, and inducing him to buy; and that merchant, having a more extensive and more attractive line of goods, would increase his business to the benefit of the railroads.

"Now, every dollar I have in the world, outside of my business,

practically every dollar, outside of my business and my home, is in railroad securities. Now, the character of this rate situation and the resentment that it creates it strikes me that I would much prefer you, gentlemen, when such competition exists, to adjust those rates than to have the doctrine that is now so largely exploited, about having other elements, enter into the situation. I feel safe in your hands. My possessions in that line may be a very small proportion to what the possessions of other men may be, still they are just as dear to me as if they were a thousand times as great. They mean as much to me. When such evident discrimination—I don't like to use that word; it is a hard word—but when such rates as prevail to-day from Chicago and St. Louis are dwelt upon, as compared with the longer hauls from some other territory, it can not but make its appearance to the public mind as favoring some particular locality; it can't have any different effect; and such a situation is apt to be used by designing politicians, who want to vote themselves greater power, to an extent that goes into very dangerous grounds as far as the holder of railroad securities is concerned, and I trust that this phase of the situation will not be lost sight of.

"St. Louis and Chicago have not asked for any priority of claims or favoritism. All they ask is to have these rates adjusted in a friendly spirit, upon an equitable basis, without favoritism to anybody or to any locality. I don't think it is an unreasonable request. You are the best judges of whether such a condition of affairs exists. They seem to exist. If they exist, I think you can do the country and the situation a great service by correcting them."

The CHAIRMAN:

"This completes the list furnished me by Mr. Barlow of the representatives of these two cities. Is there anything further, Mr. Barlow, that your people would like to say? We will give you a full opportunity to be heard."

Mr. BARLOW:

"I want to add just one word. When I sat among your councils we have generally heard expressions from committees of this kind expressed in most beautiful language: That their industries were killed; they were being driven out of business, etc. That is not the attitude of St. Louis and Chicago. These two cities are growing. They are growing rapidly in commerce and in influence. We haven't, as I understand it, been driven out of the South. We haven't been absolutely debarred from doing business there. We were compelled to do business there. We probably shall be compelled to continue our efforts in that district, so I understand from the merchants of both cities; but it is unprofitable, and it is unprofitable largely because of this difference in rates; and you, gentlemen, understand more fully and completely than we do the fact that New York, Philadelphia, Boston, and the great eastern commercial cities establish not only the financial values of this country, but the commercial values. We are manufacturing in the West substantially the same goods, articles, etc., as they are in the East, and we sell them in a common market. Will anyone claim that the cost of manufacturing in the West is less than in the East? I think not. If not, why should the West longer be harmfully affected by this adjustment of rates, especially in view of the fact, which I desire to press upon you, that their

prices fix ours and your rates minimize our legitimate profits. Now, I sincerely hope that it will not be said, on the adjournment, when we retire—and you will excuse my touching on this phase of the matter—as I have so often heard when I was sitting in your councils: 'These people are doing very well; they are growing; the rates can't hurt them very seriously.' That is not the situation. We are seriously hurt in your territory, and the territory is naturally tributary to the West. It costs us as much to manufacture as in the East, but it doesn't cost you, gentlemen, any less to haul from the West than from the East; certainly not where your distances are from 100 to 250 and 300 miles less. There can be no loss in an adjustment that is fair to the West.

"Now, treat this matter substantially on this ground; we are not begging; we are not taking the position that our industries languish and are ruined. We simply ask to come into the South profitably; that you gentlemen make it possible for us to do so, just as profitably as you do any territory substantially situated as we are, and then we will fight the battle out. I am reminded, in this situation, of that old story of the man who had a fight with a bear, and he raised his eyes to heaven and said: 'Lord, if you can't help me, don't help the bear.' We wish you to keep that attitude as between the West and the East."

Mr. TOMPKINS:

"On behalf of St. Louis, I thank you."

Mr. BARLOW:

"And on behalf of Chicago."

MERCHANTS' EXCHANGE OF ST. LOUIS,
St. Louis, May 11, 1905.

Mr. W. P. KENNETT, *City.*

DEAR SIR: President Teichmann has appointed the following committee to proceed to Washington to appear before the Senate Committee on Commerce to urge the enlargement of the powers of the Interstate Commerce Commission as outlined by President Roosevelt and advocated by him: Mr. W. P. Kennett (chairman), Mr. T. R. Ballard, Mr. Edward Devoy, Mr. George F. Powell; also as associate member, Edward E. Scharff, a director of the Merchants' Exchange of St. Louis.

The president is advised by Mr. Elkins, chairman of the Senate Committee on Commerce, that a hearing will be granted the committee on Tuesday next, the 16th instant.

Yours, truly.

GEO. H. MORGAN, *Secretary.*

THE ST. LOUIS MANUFACTURERS' ASSOCIATION,
St. Louis, May 13, 1905.

S. B. ELKINS, Esq.,
Chairman Senate Committee on Commerce, Washington, D. C.

DEAR SIR: Through the courtesy of Mr. W. P. Kennett, chairman of the committee appointed by the Merchants' Exchange of this city, who will deliver to you this letter, this association desires to say it has appointed a committee, which hopes, in the near future, the time

of which we will ask you for later, to be accorded a hearing before your honorable committee to express its views on the enlarging of the powers of the Interstate Commerce Commission.

We heartily indorse the expressions of the President of the United States on this subject and feel we will be able to present to you such facts as may convince you of the soundness, the equity, and justice of our position.

Yours, truly, L. D. KINGSLAND, *President.*

MERCHANTS' EXCHANGE OF ST. LOUIS,
St. Louis, Mo., May 12, 1905.

Resolutions adopted by the board of directors of the Merchants' Exchange of St. Louis in reference to interstate-commerce law.

[December 8, 1903.]

Resolved, That to make the act to regulate commerce effective, greater power and control should be given to the Commission, and Congress should be urged to pass such laws as will fully safeguard and promote both the public and transportation interests and give force and effect to the findings and rulings of the Commission.

[December 13, 1904.]

The board of directors of the Merchants' Exchange of St. Louis heartily indorses the action taken by the interstate-commerce law convention at St. Louis October 28–29, 1904, to secure the establishment and enforcement of just and reasonable rates of transportation.

[January 19, 1905.]

It is the sense of the board of directors of the Merchants' Exchange of St. Louis that legislation is necessary giving to the Interstate Commerce Commission greater power, as outlined by the President in his late message to Congress.

[May 9, 1905.]

That the president be authorized to appoint a committee of four to proceed to Washington to appear before the Senate Committee on Commerce to urge the enlarging of the powers of the Interstate Commerce Commission, as outlined by President Roosevelt and advocated by him.

[SEAL.] GEO. H. MORGAN, *Secretary.*

[No. 1.]

THE MISSOURI PACIFIC RAILWAY COMPANY,
St. Louis, Mo., May 12, 1905.

MR. A. F. VERSEN, *Secretary St. Louis Traffic Bureau, St. Louis.*

DEAR SIR: In reply to yours of April 22 requesting readjustment of burlap bags, carloads, St. Louis to Cairo, would advise that we will,

effective the 20th instant, establish 10 cents per hundredweight, minimum 30,000 pounds.

Yours, respectfully, A. T. STEWART.

ST. LOUIS TRAFFIC BUREAU,
St. Louis, May 13, 1905.

Mr. W. P. KENNETT, *Chairman, City.*

DEAR SIR: Attached please find memoranda showing rates on bags from New Orleans and St. Louis to a number of stations on and north of the Ohio River.

The rate from New Orleans to Chicago (item 16) is 15 cents per hundred, carload, for a distance of 912 miles; the rate from East St. Louis to Chicago, for a distance of 280 miles, is 18 cents per hundred.

Yours, truly,

A. F. VERSEN, *Secretary.*

Bags, burlap and gunny.

Item.	To—	From—	Mileage.	C. L.	L. C. L.
1	Cairo, Ill	New Orleans	555	13	25
		St. Louis	149	14½	19
2	Hickman, Ky	New Orleans	521	13	25
		St. Louis	214	18	20
3	Paducah, Ky	New Orleans	563	13	25
		St. Louis	167	11	13
4	Evansville, Ind	New Orleans	709	13	25
		East St. Louis	162	12	19
5	Henderson, Ky	New Orleans	697	13	25
		East St. Louis	173	15	22
6	Louisville, Ky	New Orleans	789	13	25
		East St. Louis	371	17	25
7	Jeffersonville, Ind	New Orleans	791	13	25
		East St. Louis	270	17	25
8	New Albany, Ind	New Orleans	796	13	25
		East St. Louis	265	17	25
9	Owensboro, Ky	New Orleans	733	13	25
		East St. Louis	202	17	25
10	Cincinnati, Ohio	New Orleans	880	14	27½
		East St. Louis	336	17	25
11	Covington, Ky	New Orleans	832	14	27½
		East St. Louis	338	17	25
12	Lawrenceburg, Ind	New Orleans	852	14	27½
		East St. Louis	314	17	25
13	Lexington, Ky	New Orleans	748	14	27½
		East St. Louis	356	27	38½
14	Madison, Ind	New Orleans	903	14	27½
		East St. Louis	325	17	25
15	Newport, Ky	New Orleans	832	14	27½
		East St. Louis	338	17	25
16	Chicago, Ill	New Orleans	912	15	29
		East St. Louis	280	18	23
17	Bedford, Ind	New Orleans	868	15	29
		East St. Louis	227	15	22½
18	Bloomington, Ind	New Orleans	893	15	29
		East St. Louis	240	15	22½
19	Bloomington, Ill	New Orleans	804	15	29
		East St. Louis	155	16.84	21.05
20	Burlington, Iowa	New Orleans	927	15	29
		St. Louis	222	12	18
21	Cayuga, Ind	New Orleans	856	15	29
		East St. Louis	184	14	21½
22	Crawfordsville, Ind	New Orleans	851	15	29
		East St. Louis	219	15½	23
23	Decatur, Ill	New Orleans	760	15	29
		East St. Louis	110	15.64	19.55
24	Effingham, Ill	New Orleans	721	15	29
		East St. Louis	98	12	20
25	Freeport, Ill	New Orleans	943	15	29
		East St. Louis	302	18	23

Bags, burlap and gunny—Continued.

Item.	To—	From—	Mileage.	C. L.	L. C. L.
26	Galesburg, Ill	New Orleans	888	15	29
		East St. Louis	183	17	22
27	Greencastle, Ind	New Orleans	839	15	29
		East St. Louis	200	15	22½
28	Hannibal, Mo	New Orleans	825	15	29
		St. Louis	120	14	19
29	Indianapolis, Ind	New Orleans	870	15	29
		East St. Louis	239	16	23½
30	Lafayette, Ind	New Orleans	864	15	29
		East St. Louis	230	15½	23
31	Louisiana, Mo	New Orleans	797	15	29
		St. Louis	92	12	17
32	Michigan City, Ind	New Orleans	956	15	29
		East St. Louis	322	18½	27
33	Mitchell, Ind	New Orleans	858	15	29
		East St. Louis	210	15	22½
34	Princeton, Ind	New Orleans	736	15	29
		East St. Louis	159	16	23
35	Shelby, Ind	New Orleans	1,061	15	29
		East St. Louis	299	18½	27
36	Sullivan, Ind	New Orleans	792	15	29
		East St. Louis	165	14	21½
37	Switz City, Ind	New Orleans	803	15	29
		East St. Louis	186	15	22½
38	Terre Haute, Ind	New Orleans	798	15	29
		East St. Louis	166	14	21½
39	Vincennes, Ind	New Orleans	842	15	29
		East St. Louis	148	13½	20
40	Springfield, Ill	New Orleans	800	15	29
		East St. Louis	95	14	18
41	Milwaukee, Wis	New Orleans	997	17	31
		East St. Louis	365	20	26
42	Racine, Wis	New Orleans	974	17	31
		East St. Louis	342	20	26
43	Monroe, Wis	New Orleans	967	17	31
		East St. Louis	327	20	26

[No. 2.]

ST. LOUIS TRAFFIC BUREAU,
St. Louis, May 13, 1905.

Mr. W. P. KENNETT, *Chairman, City.*

DEAR SIR: Attached please find memoranda showing class rates from St. Louis and competing markets to six of the principal towns in the Southeast.

The figures shown herein from St. Louis are the new rates which will become effective on May 15. I have not shown reduced rates from Chicago, but I understand that, effective May 16, a reduction of 5 cents on first class, 4 cents on second, 3 cents on third, and 2 cents on fourth, fifth, and sixth classes will be made in the rates from Chicago.

The rates from Memphis, Tenn., to Birmingham, Montgomery, Atlanta, Macon, and Columbus are 4 cents per hundred pounds less than the rates from Louisville; thus the rates from Memphis to Atlanta, Ga., are 94, 83, 74, 59, 48, and 37.

To the Southwest, or Texas, St. Louis enjoys a differential of 10 cents per hundred on the first four classes over the rate from Memphis. This same basis should be established to the Southeast. If it were the rates from St. Louis to Atlanta, Ga., would be 10 cents per hundred pounds over the Memphis rate, or 6 cents per hundred pounds over the rates shown herein from Louisville, viz, 104, 93, 84, 69, 58, and 47, against 121, 106, 95, 75, 62, and 49, the latter being the six class rates to Atlanta, Ga., effective May 15.

This differential of 10 cents per hundred pounds over the Memphis rate, or 6 cents over the Louisville rate, should apply to all other points in the so-called "southeastern territory."

Yours, truly,

A. F. VERSEN, *Secretary.*

From—	Miles.	To—	1.	2.	3.	4.	5.	6.
Florence, Ala	378	St. Louis	102	88	75	59	50	38
	570	Chicago	119	103	83	64	55	42
	427	Cincinnati	89	79	68	55	47	36
	313	Louisville	79	69	58	47	40	30
	1,014	New York, all rail	116	100	88	75	62	51
		New York, sea and rail	116	100	88	75	62	51
	765	Richmond	86	81	66	54	45	42
	560	Savannah	84	79	64	55	45	40
Birmingham, Ala	499	St. Louis	102	88	75	59	50	38
	651	Chicago	119	103	83	64	55	42
	481	Cincinnati	89	79	68	55	47	36
	394	Louisville	79	69	58	47	40	30
	990	New York, all rail	126	108	95	81	66	54
		New York, sea and rail	114	98	86	73	60	49
	747	Richmond	84	79	64	52	43	40
	423	Savannah	74	68	56	46	38	35
Montgomery, Ala	609	St. Louis	121	106	95	75	62	49
	746	Chicago	138	121	103	80	67	53
	577	Cincinnati	108	97	88	71	59	47
	490	Louisville	98	87	78	63	52	41
	1,051	New York, all rail	126	108	95	81	66	54
		New York, sea and rail	114	98	86	73	60	49
	754	Richmond	84	79	64	52	43	40
	340	Savannah	74	68	56	46	38	35
Atlanta, Ga	611	St. Louis	121	106	95	75	62	49
	733	Chicago	138	121	103	80	67	53
	492	Cincinnati	98	87	78	63	52	41
	472	Louisville	98	87	78	63	52	41
	876	New York, all rail	117	103	92	76	62	49
		New York, sea and rail	105	93	83	68	56	44
	550	Richmond	80	76	62	50	41	37
	260	Savannah	69	63	51	43	35	33
Macon, Ga	699	St. Louis	126	109	98	77	64	51
	821	Chicago	143	124	106	82	69	55
	580	Cincinnati	103	90	81	65	54	43
	560	Louisville	103	90	81	65	54	43
	949	New York, all rail	114	101	90	74	61	48
		New York, sea and rail	102	91	81	66	55	43
	611	Richmond	83	76	68	56	47	38
	172	Savannah	64	56	48	40	34	30
Columbus, Ga	657	St. Louis	126	109	98	77	64	51
	808	Chicago	143	134	106	82	69	55
	618	Cincinnati	113	100	91	75	61	49
	552	Louisville	103	90	81	65	54	43
	1,002	New York, all rail	117	103	92	76	62	49
		New York, sea and rail	105	93	83	68	56	44
	676	Richmond	88	78	71	59	48	39
	267	Savannah	69	63	51	43	35	33

[No. 3.]

ST. LOUIS TRAFFIC BUREAU,
St. Louis, May 13, 1905.

Mr. W. P. KENNETT, *Chairman, City.*

DEAR SIR: Attached please find memoranda showing rates on cotton piece goods from St. Louis to a number of points in Arkansas, as compared to the rates from Pine Bluff and Memphis, also the combination rates from St. Louis, based on Pine Bluff and Memphis.

Yours, truly,

A. F. VERSEN, *Secretary.*

COTTON PIECE GOODS.

From St. Louis to stations on the St. Louis Southwestern Railway (Cotton Belt) in Arkansas:

		Per cwt.
St. Louis to Fordyce, Ark. (Joint Tariff No. 3625, I. C. C. No. 2085, effective September 15, 1904)		$1.15
St. Louis to Pine Bluff (Ark. Frt. Com. Tariff No. 1-E, I. C. C. No. 32, effective January 1, 1905)	$0.60	
Pine Bluff to Fordyce (Ark. R. R. Commr. Tariff)	.24	
Through rate, based on Pine Bluff		.84
Discrimination against St. Louis, in favor of Pine Bluff		.29
St. Louis to Stuttgart, Ark. (Ark. Frt. Com. Tariff No. 1-E)		1.00
St. Louis to Memphis, Tenn. (Joint Frt. Tariff No. 1-O, M. and O., I. C. C. No. 3476, effective May, 1905)	$0.35	
Memphis to Stuttgart (Ark. Frt. Com. Tariff No. 2-E, I. C. C. No. 31, effective December 24, 1904)	.35	
Through rate, based on Memphis		.70
Discrimination against St. Louis, in favor of Memphis		.30

The rates shown as applying to Stuttgart will also apply to Altheimer, Dixie Mills, Dumbeck, England, Humphrey, Keo, Roe, Rob Roy, Scotts, Sherrill, Toltec, Tucker, Ulm, Wabassecca, and a number of other stations.

[No. 4.]

ST. LOUIS TRAFFIC BUREAU,
St. Louis, May 13, 1905.

Mr. W. P. KENNETT,
Chairman (care D. R. Francis & Bro.), City.

DEAR SIR: Attached hereto please find a memorandum showing rates from St. Louis, Mo., Richmond, Lynchburg, and Norfolk, Va., to Alexandria, Monroe, and Shreveport, La., which is self-explanatory.

Yours, truly,

A. F. VERSEN, *Secretary.*

THE MISSOURI PACIFIC RAILWAY COMPANY,
St. Louis, Mo., May 10, 1905.

Mr. A. F. VERSEN,
Secretary St. Louis Traffic Bureau, City.

DEAR SIR: Your communication of April 17 concerning rates on first four classes, bagging, canned goods, and coffee, St. Louis to Alexandria and group versus rates in effect from Virginia cities, has been given careful consideration, and the rates which you cite we believe to be nothing more than "paper rates," inasmuch as we can learn of no movement of any of the special commodities which you have enumerated from the Virginia cities. From this it would appear that the rate adjustment from St. Louis is not in any manner embarrassing the St. Louis shippers, and for the present at least we can not consent to a change in the established basis.

Yours, truly,

E. B. LANE.

St. Louis to Alexandria, Monroe, and Shreveport (governed by the western classification)	117	101	87	74		
Richmond, Lynchburg, and Norfolk to Alexandria, Monroe, and Shreveport (governed by the southern classification)	80	80	79	71	62	53

Distances to Shreveport from—	Miles.
Richmond	1,183
Lynchburg	1,108
Norfolk	1,249
St. Louis	565

To Alexandria, Monroe, and Shreveport, La.

Bagging, L. C. L.:	
From St. Louis	74
From Virginia cities	48½
Canned goods, L. C. L.:	
From St. Louis	74
From Virginia cities	70
Coffee, green, in single sacks, L. C. L.:	
From St. Louis	74
From Virginia cities	70
Coffee, green, in double sacks, L. C. L.:	
From St. Louis	74
From Virginia cities	53
Coffee, ground, in boxes or barrels, L. C. L.:	
From St. Louis	74
From Virginia cities	73
Coffee, roasted, in boxes or barrels, L. C. L.:	
From St. Louis	74
From Virginia cities	63

[No. 5.]

ST. LOUIS TRAFFIC BUREAU,
St. Louis, May 13, 1905.

Mr. W. P. KENNETT, *Chairman, City.*

DEAR SIR: Attached please find memoranda showing the rates on beans, coffee, crackers, canned goods, etc., from East St. Louis and Chicago to a number of stations in southern Illinois. In addition to the stations shown, there are about 100 towns in the same territory similarly affected.

Beans, crackers, canned goods, jelly, pickles, and sirup and molasses are classified at fourth class in the Illinois classification. Coffee, fish—pickled, salted, or smoked—and sugar are classified at fifth class, and hardware and axes third class, and shovels and scoops at second class.

The rates shown in the attached to Cairo, for example, from Chicago on articles classified at fourth class, viz: Beans, crackers, canned goods, jelly, and pickles, and sirup and molasses are 24 per cent less than the authorized class rate from Chicago to the same point, the fourth-class rate being 25 cents.

The rates on coffee, fish, and sugar shown herein are 15.58 per cent less than the authorized class rate from Chicago to Cairo.

The rates on hardware and axes are 20.5 per cent less than the third-class rate, and shovels and scoops 43.75 per cent less than second class from Chicago to Cairo.

While Chicago has enjoyed commodity or special rates to stations in southern Illinois, St. Louis has been compelled to ship at the established class rates. A corresponding reduction should be made from St. Louis to place this market on an equal basis with Chicago.

Yours, truly,

A. F. VERSEN, *Secretary.*

To—	Miles.	From—	Beans.	Coffee.	Crackers.	Canned goods.	Fish, P. S. & S.	Jelly and preserves, in wood.	Pickles, in wood.	Sugar.	Sirup and molasses.	Hardware; axes.	Shovels and scoops.
Iron Mountain, M. and O., etc.													
Chester, Ill	66	East St. Louis.	17	13	17	17	13	17	17	13	17	24	29
	325	Chicago	19	19	19	19	19	19	19	19	19	27	27
Menard, Ill	65	East St. Louis.	17	13	17	17	13	17	17	13	17	24	29
	324	Chicago	19	19	19	19	19	19	19	19	19	27	27
Pinckneyville, Ill	61	East St. Louis.	15.50	12.40	15.5	15.5	12.4	15.5	15.5	12.4	15.5	22.6	26.3
	298	Chicago	19	19	19	19	19	19	19	19	19	27	27
Ziegler, Ill	---	East St. Louis.	17.86	14.28	17.86	17.86	14.28	17.86	17.86	14.28	17.86	24.34	30.08
	---	Chicago	19	19	19	19	19	19	19	19	19	27	27
Centralia, Ill	62	East St. Louis.	13.5	13.02	16.29	16	10.5	16.29	16.29	13.02	13.5	20	20
	252	Chicago	17	17	17	17	17	17	17	17	17	26.5	26.5
Mount Vernon, Ill	76	East St. Louis.	14	13.16	16.45	16	10.5	16.45	16.45	13.16	14	20	20
	276	Chicago	19	19	19	19	19	19	19	19	19	27	27
Illinois Central R. R.													
Du Quoin, Ill	71	East St. Louis.	16.5	13.2	16.5	16.5	13.2	16.5	16.5	13.2	16.5	23.5	28.2
	348	Chicago	19	19	19	19	19	19	19	19	19	27	27
Carbondale, Ill	90	East St. Louis.	17.9	14.3	17.9	17.9	14.3	17.9	17.9	14.3	17.9	24.3	30.1
	308	Chicago	19	19	19	19	19	19	19	19	19	27	27
Anna, Ill	111	East St. Louis.	20	16	20	20	16	20	20	16	20	26	32
	329	Chicago	19	19	19	19	19	19	19	19	19	27	27
Pulaski, Ill	132	East St. Louis.	20	16	20	20	16	20	20	16	20	26	32
	349	Chicago	19	19	19	19	19	19	19	19	19	27	27
Cairo, Ill	148	St. Louis, East St. Louis.	19	14.5	19	19	14.5	19	19	14.5	19	24	29
	365	Chicago	19	19	19	19	19	19	19	19	19	27	27
Murphysboro, Ill	84	East St. Louis.	17.4	13.9	17.4	17.4	13.9	17.4	17.4	13.9	17.4	24.1	29.6
	316	Chicago	19	19	19	19	19	19	19	19	19	27	27
Marion, Ill	106	East St. Louis.	19.6	15.6	19.6	19.6	15.6	19.6	19.6	15.6	19.6	25.5	32
	324	Chicago	19	19	19	19	19	19	19	19	19	27	27
Johnston City, Ill	109	East St. Louis.	19.55	15.64	19.55	19.55	15.64	19.55	19.55	15.64	19.55	25.47	31.96
	327	Chicago	19	19	19	19	19	19	19	19	19	27	27
Gale, Ill	145	East St. Louis.	18	14	18	18	14	18	18	14	18	24	29
	363	Chicago	19	19	19	19	19	19	19	19	19	27	27

[No. 6.]

ST. LOUIS TRAFFIC BUREAU,
St. Louis, May 13, 1905.

Mr. W. P. KENNETT, *Chairman, City.*

DEAR SIR: Attached please find memoranda showing rates on corn and oats, carloads, from a number of stations on the Chicago, Burlington and Quincy Railroad in Illinois to Cairo and Evansville when destined to the Southeast.

The rate from Doggetts, Ill., the first station shown on the list, to East St. Louis is 12.15 cents per hundred; the rate to Cairo and Evansville, when destined to the Southeast, is 12 cents per hundred; the rate from East St. Louis to Cairo and Evansville, when destined to the Southeast, is 1 cent per hundred, making the through rate on

grain billed locally to East St. Louis and reconsigned from that point to Cairo, on business destined to the Southeast, 13.15 cents, or 1.15 cents per hundred higher than the through rate.

Yours, truly, A. F. VERSEN, *Secretary.*

Corn and oats, carload.

From—	To East St. Louis.	To Cairo and Evansville when destined to southeastern and Carolina territories.	To New Albany, Ind.	
			For southeastern territory.	For Carolina territory.
Daggetts, Ill	12.15	12	14	15
Chadwick, Milledgeville, Hazelhurst, and Polo, Ill	12.39			
Stratford, Oregon, Maryland, Mount Morris, and Rockford, Ill	12.64	12	14	15
Sterling, Rockfalls, Stones, and Harmon, Ill	10	12	14	15
Walton, Ill	11.99	12	14	15
Lamoille, Vanorin, and Ohio, Ill	11.88	12	14	15
Greenoak and Kasbeer, Ill	11.50	12	14	15
Shaws, Ill	12.15	11	14	15
Compton, Carnahan, West Brooklyn, Amboy, and Pawpaw, Ill	11.99	11	14	15
Mendota and Meriden, Ill	11.66	11	14	15
Clarion and Arlington, Ill	11.50	11	14	15
Malden and Princeton, Ill	11.34	11	14	15
Wyanette, Ill	11.18	11	14	15
Earlville, Ill	11.88	11	14	15
Lasalle, Ill	11.66	11	14	15
Zearing, Ill	11.50	11	14	15
Radley, Ill	11.88	11	14	15
Arenzville, Ill	8.22	7	8	9
Concord, Ill	8.10	7	8	9
Chapin, Ill	7.97	7	8	9
Merritt and Riggston, Ill	7.86	7	8	9
Winchester, Ill	7.70	7	8	9
Alsey, Ill	7.50	7	8	9
Barrow, Ill	7.29	7	8	9
West Roodhouse and Whitehall, Ill	7.05	7	8	9
Wrights, Ill	6.56	7	8	9
Greenfield, Ill	6.32	7	8	9
Rockbridge, Ill	6.08	7	8	9
Kemper and Medora, Ill	5.83	7	8	9
Piasa, Ill	5.60	7	8	9
Brighton, Ill	5.35	7	8	9
Woods and Upper Alton, Ill	4.86	7	8	9

[No. 7.]

ST. LOUIS TRAFFIC BUREAU,
St. Louis, May 13, 1905.

Mr. W. P. KENNETT,
Chairman (Care D. R. Francis & Bro.), City.

DEAR SIR: Attached hereto please find memoranda of rates on corn and oats from Missouri River points to St. Louis, New Orleans, and Atlantic seaboard, etc.; also from St. Louis to the same points.

I have shown the normal rates as well as the reduced rates which were in effect during the so-called "rate war." Where no rate is carried in the cut-rate column the rates from St. Louis have remained stationary, while the rates from the Missouri River were reduced.

Since the rates were restored to the old basis, on April 1, the rate from St. Louis to Memphis has been reduced to 7 cents per hundred and to New Orleans and Natchez and points taking same rate, 11 cents per hundred; to Little Rock and Pine Bluff, on corn and oats, 12 cents per hundred.

Effective May 8, the rate to New York and Boston, for export, was reduced to 14½ cents per hundred; to Philadelphia, for export, 13½ cents per hundred; to Baltimore, Newport News, and Norfolk, 13 cents per hundred.

These reductions, however, do not have any bearing on the adjustment which existed from St. Louis, as compared with the rates from Missouri River points prior to April 1.

Yours, truly,

A. F. VERSEN, *Secretary.*

Rates on corn and oats from Missouri River points to St. Louis, New Orleans, Atlantic seaboard, etc.; also from St. Louis to the same points.

	Normal rate.	Cut rate.	From St. Louis.	
			Normal rate.	Cut rate.
From Kansas City, Mo.; St. Joseph, Mo.; Atchison, Kans., and Leavenworth, Kans., to—				
St. Louis	8	5		
Memphis, Tenn	12	7	8	
New Orleans, La., for export	17	10	10	8
New Orleans, La., and Natchez, Miss	17	13	12	8
Little Rock and Pine Bluff, Ark	12	7	[a] 14 12	7 7
Texarkana, Ark., Shreveport and Monroe, La	14	7	14	7
Newport, Ark	14	8	12	
Hoxie, Ark	14	8	12	
Walnut Ridge, Ark	14	8	12	
Nettleton, Ark	14	8	12	
New York and Boston, for export	24	13	16	
Philadelphia, for export	23	12	15	
Baltimore, for export	22½	11½	14½	
Newport News, for export	22½	11½	14½	
Norfolk, for export	22½	11½	14½	
From Omaha, Nebr., to—				
St. Louis	8	5		
Little Rock and Pine Bluff	15	9	14	7
Memphis, Tenn	13	10	8	
New Orleans, for export	18	11	10	8
New York and Boston, for export	24	13	16	
Philadelphia, Pa., for export	23	12	15	
Baltimore, Md., for export	22½	11½	14½	
Newport News, for export	22½	11½	14½	
Norfolk, Va., for export	22½	11½	14½	

[a] Oats.

[No. 8.]

ST. LOUIS TRAFFIC BUREAU,
St. Louis, May 13, 1905.

Mr. W. P. KENNETT, *Chairman, City.*

DEAR SIR: Attached please find a memoranda showing rates from St. Louis and Kansas City to a number of stations in southern Arkansas and northern Louisiana, to which the rates from St. Louis are 2 cents per hundred pounds higher than from Kansas City.

Yours, truly,

A. F. VERSEN, *Secretary.*

THE MISSOURI PACIFIC RAILWAY COMPANY,
At Kansas City, Mo., May 11, 1905.

MR. A. F. VERSEN,
Secretary St. Louis Traffic Bureau, St. Louis, Mo.

DEAR SIR: This will acknowledge receipt of your letter of April 20 respecting adjustment of rates on grain from St. Louis versus Kansas City to stations in Arkansas and Louisiana.

There is no reason why the rate from St. Louis should be higher than the proportional rate from Kansas City to stations in Arkansas embraced in your statement, and I am somewhat surprised at your statement to see that such is the case.

Immediately on my return home I will look into the details, and if the situation is found to exist as you have stated will see that it is rectified. It has uniformly been our purpose to make the rate from St. Louis to Arkansas and Louisiana points south of Little Rock no higher than proportional rate from Kansas City, and I assumed that this basis was being carried out.

Yours, truly, J. C. LINCOLN.

Wheat, corn, and oats.

Eldorado and Bastrop Railway:		
Bolding Spur, Felsenthal, Kinard, Knight, La Pile, Lawson, Nick Springs, Payne, Strong, Urbana, and White, Ark.—		
St. Louis	26	23
Kansas City	24	21
	2	2
Hot Springs, Ark.—		
St. Louis	24	21
Kansas City	22	19
	2	2
Arkansas-Midland Railroad:		
Brinckley and Clarendon, Ark.—		
St. Louis	16	14
Kansas City	14	12
	2	2
Barton, Blackton, Coolidge, Duncan, Glen Mary, Glenwood, Hicksville, Holly Grove, Holwell, Lake Ridge, Marvell, Monroe, Palmer, Pillows, Pine City, Poplar Grove, Postelle, and Raymond—		
St. Louis	20	18
Kansas City	18	16
	2	2
New Orleans and Northwestern Railroad:		
Archibald, Bastrop, Baskins, Big Creek, Burke, Boeuff River, Clayton, Copeland, Elam, Florence, Gilbert, Greenville, Jonesburg, Lake La Fourche, Lee Bayou, Manglam, Oak Ridge, Peck, Stevenson, Upland, Vaughn, Wardville, Wells Lake, Wisner, and Winnsboro—		
St. Louis	26	24
Kansas City	24	22
	2	2

Wheat, corn, and oats—Continued.

Mississippi River, Hamburg and Western Railroad:		
Connerly, Bayou Macon—		
St. Louis	25	21
Kansas City	23	19
	2	2
Crooked Bayou, Norty Wye, Loyds, Owens Spur, Thebes, and Snyder—		
St. Louis	26	22
Kansas City	24	20
	2	2
Mist—		
St. Louis	26	22
Kansas City	24	20
	2	2
Wallace, Hamburg, Crossett, and Bovine—		
St. Louis	26	23
Kansas City	24	21
	2	2
Arkansas and Louisiana Station:		
Claw, Compton, Nashville, Ozan, Payton, and Washington—		
St. Louis	27	24
Kansas City	25	22
	2	2
Arkansas Southwestern Railway:		
Antoine, Delight, Durretts, and Millers—		
St. Louis	29	26
Kansas City	27	24
	2	2
Keyton and Okalona—		
St. Louis	27	24
Kansas City	25	22
	2	2
Bobos, Pike City, and White Sulphur—		
St. Louis	30	27
Kansas City	28	25
	2	2

[No. 9.]

ST. LOUIS TRAFFIC BUREAU,
St. Louis, May 13, 1905.

Mr. W. P. KENNETT, *Chairman, City.*

DEAR SIR: Attached please find memoranda showing rates on wheat and corn from stations on the Santa Fe in the Indian and Oklahoma Teritories to St. Louis and Chicago; also rates on wheat and flour from stations on the Wabash to lower Mississippi Valley points, as compared to the rates from the same stations in Missouri

and Iowa on the Wabash to St. Louis, plus the rate from St. Louis south.

Yours, truly, A. F. VERSEN, *Secretary.*

Copy to Messrs. Edw. Devoy, T. R. Ballard, Geo. F. Powell.

[Santa Fe System Tariff No. 5588-E. I. C. C. No. 3167—effective April 25, 1905.]

Grain rates from stations in the Indian and Oklahoma Territories.

From—	To St. Louis.[a]		To Chicago.	
	Wheat.	Corn.	Wheat.	Corn.
Mulhall, Okla	28½	25½	28½	23½
Guthrie, Okla	30½	27½	28½	23½
Edmond, Okla	31½	28½	28½	23½
Purcell, Ind. T	32	29	30	25½
Marietta, Ind. T	35	32	34	29
Wynnewood, Ind T	32½	29½	31½	26
Chickaho, Okla	31½	27½	28½	23½
Pauls Valley, Ind. T	32½	29	30	27
Ripley, Okla	29½	26½	28½	23½
Tecumseh, Okla	31½	28½	28½	25
Lindsay, Ind. T	32½	29½	30½	27½

[a] The rates to St. Louis are based on a combination of locals through Kansas City. The proportional rates from Kansas City to St. Louis are 9 and 8 cents on wheat and corn, respectively.

The accepted and established differential on grain to Chicago from Kansas, Indian and Oklahoma Territories, and Nebraska is 3 cents per hundredweight over the St. Louis rate.

The Santa Fe Railroad does not publish through rates to St. Louis, which necessitates the application of the combination of locals through Kansas City, with the result that in many cases the rates to St. Louis are higher than to Chicago.

Wabash tariff No. 33786-I. C. C. No. 1384, effective August 15, 1904.

To New Orleans, La.: Natchez, Miss.; Mobile, Ala.; Greenville, Miss.; Vicksburg, Miss.; Vidalia, La.; Arkansas City, Ark.

WHEAT AND FLOUR.

		Per cwt.
From St. Louis or East St. Louis		$0.17
From Mexico, Mo., to St. Louis	$0.09½	
From St. Louis to New Orleans group	.17	
Combination rate paid by St. Louis shipper		.26½
Through rate, Mexico, Mo., to New Oreleans group (will route through St. Louis)		.22½
Differential in favor of shipper		.04
From Chillicothe, Mo., to St. Louis	$0.12½	
From St. Louis to New Orleans group	.17	
Combination rate paid by St. Louis shipper		.29½
Through rate, Chillicothe to New Orleans and group		.25½
Differential in favor of the country shipper		.04

The through rates on wheat and flour from stations on the Wabash in Missouri and Iowa to New Orleans and group in the lower Mississippi Valley are made by adding a differential of 13 cents to rate from the point of origin to St. Louis. As the rate from St. Louis to the New Orelans group is 17 cents per hundredweight, the differential of 13 cents published by the Wabash Railroad gives the country shipper an advantage of 4 cents per hundredweight.

Shipments from Wabash stations in Missouri and Iowa to the lower Mississippi Valley will route via St. Louis.

Mr. CARLETON. Mr. Chairman, pardon me just one moment. May I submit to you the rates in the St. Louis territory—first, second, and third class?

The CHAIRMAN. Yes, sir; along with your remarks.

Mr. CARLETON. I will state, Senator Foraker, that the distance from Cincinnati to Florence, Ala., is 427 miles, and from St. Louis is 378; the first-class rate is $1.02 from St. Louis and 89 cents from Cincinnati. I just state that for your encouragement.

Senator FORAKER. Yes, sir. Do you mean that Cincinnati has a good rate?

Mr. CARLETON. Splendid.

The following papers submitted by Mr. Carleton are, by direction of the committee, incorporated in the record at this point:

ST. LOUIS TRAFFIC BUREAU,
St. Louis, May 13, 1905.

Mr. MURRAY CARLETON,
President Carleton Dry Goods Company, City.

DEAR SIR: In compliance with your request, I beg to inclose herewith a memorandum of rates for the first four classes from St. Louis, Chicago, and New York to a number of points in the South and Southwest.

I also inclose a memorandum showing rates for the first six classes from St. Louis, Chicago, Cincinnati, Louisville, New York, Savannah, and Richmond to six of the principal points in the Southeast.

Hoping this will convey to you the information desired, and awaiting your further pleasure, I am,

Yours, truly,

A. F. VERSEN, *Secretary.*

To—	Miles.	From—	1.	2.	3.	4.	5.	6.
Florence, Ala	378	St. Louis	102	88	75	59	50	38
	570	Chicago	119	103	83	64	55	42
	427	Cincinnati	89	79	68	55	47	36
	313	Louisville	79	69	58	47	40	30
	1,014	New York, all rail	116	100	88	75	62	51
		New York, sea and rail	116	100	88	75	62	51
	765	Richmond	86	81	66	54	45	42
	560	Savannah	84	79	64	55	45	40
Birmingham, Ala	499	St. Louis	102	88	75	59	50	38
	651	Chicago	119	103	83	64	55	42
	481	Cincinnati	89	79	68	55	47	36
	394	Louisville	79	69	58	47	40	30
	990	New York, all rail	126	108	95	81	66	54
		New York, sea and rail	114	98	86	73	60	49
	747	Richmond	84	79	64	52	43	40
	423	Savannah	74	68	56	46	38	35
Montgomery, Ala	609	St. Louis	121	106	95	75	62	49
	746	Chicago	138	121	103	80	67	53
	577	Cincinnati	108	97	88	71	59	47
	490	Louisville	98	87	78	63	52	41
	1,051	New York, all rail	126	108	95	81	66	54
		New York, sea and rail	114	98	86	73	60	49
	754	Richmond	84	79	64	52	43	40
	340	Savannah	74	68	56	46	38	35
Atlanta, Ga	611	St. Louis	121	106	95	75	62	49
	733	Chicago	138	121	103	80	67	53
	492	Cincinnati	98	87	78	63	52	41
	472	Louisville	98	87	78	63	52	41
	876	New York, all rail	117	103	92	76	62	49
		New York, sea and rail	105	93	83	68	56	44
	550	Richmond	80	76	62	50	41	37
	260	Savannah	69	63	51	43	35	33
Macon, Ga	699	St. Louis	126	109	98	77	64	51
	821	Chicago	143	124	106	82	69	55

From—	Miles.	To—	1.	2.	3.	4.	5.	6.
Macon, Ga	580	Cincinnati	103	90	81	65	54	43
	560	Louisville	103	90	81	65	54	43
	949	New York, all rail	114	101	90	74	61	48
		New York, sea and rail	102	91	81	66	55	43
	611	Richmond	83	76	68	56	47	38
	172	Savannah	64	56	48	40	34	30
Columbus, Ga	657	St. Louis	126	109	98	77	64	51
	808	Chicago	143	124	106	82	69	55
	618	Cincinnati	113	100	91	75	61	49
	552	Louisville	103	90	81	65	54	43
	1,002	New York, all rail	117	103	92	76	62	49
		New York, sea and rail	105	93	83	68	56	44
	676	Richmond	88	78	71	59	48	39
	267	Savannah	69	63	51	43	35	33

To—	Mileage.	From—	1.	2.	3.	4.
Des Moines, Iowa	341	St. Louis	60	45	35	26
	358	Chicago	68	50	40	29
	1,257	New York	143	115	90	64
Kansas City, Mo	277	St. Louis	60	45	35	27
	458	Chicago	80	65	45	32
	1,302	New York	147	120	93	67
Omaha, Nebr	413	St. Louis	60	45	35	27
	490	Chicago	80	65	45	32
	1,402	New York	147	120	93	67
Wichita, Kans	479	St. Louis	119½	98	81	64
	687	Chicago	139½	118	91	69
	1,537	New York	206½	173	139	104
Columbus, Nebr	507	St. Louis	95	75	62	48
	584	Chicago	115	95	72	53
	1,496	New York	182	150	120	88
Sioux City, Iowa	455	St. Louis	80	65	45	32
	517	Chicago	80	65	45	32
	1,422	New York	155	130	95	67
Denver, Colo	910	St. Louis	185	145	115	92
	1,018	Chicago	205	165	125	97
	1,930	New York, all rail	272	220	173	132
		New York, ocean and rail	233	190	147	116
Salt Lake City	1,483	St. Louis	290	245	205	170
	1,541	Chicago	310	265	215	175
	2,452	New York, all rail	377	320	263	210
		New York, ocean and rail	338	290	237	194
Cheyenne, Wyo	982	St. Louis	185	145	115	92
	1,009	Chicago	205	165	125	97
	1,899	New York	272	220	173	132
Butte, Mont	1,648	St. Louis	310	260	210	175
	1,686	Chicago	310	265	215	175
	2,598	New York	385	330	265	210
Deadwood, S. Dak	1,472	St. Louis	205	175	150	127
	1,549	Chicago	225	195	160	132
	2,461	New York	292	250	208	167
Seattle, Wash	2,329	St. Louis	300	260	220	190
	2,237	Chicago	300	260	220	190
	3,149	New York	300	260	220	190
Portland, Oreg	2,225	St. Louis	300	260	220	190
	2,312	Chicago	300	260	220	190
	3,181	New York	300	260	220	190
San Francisco, Cal	2,280	St. Louis	300	260	220	190
	2,338	Chicago	300	260	220	190
	3,250	New York	300	260	220	190
Santa Fe, N. Mex	1,149	St. Louis	212	190	170	147
	1,337	Chicago	232	210	180	152
	2,173	New York	299	265	228	187
Oklahoma City	543	St. Louis	130	109	97	84
	858	Chicago	150	129	107	89
	1,601	New York, all rail	197	166	140	119
		New York, ocean and rail	177	151	128	114
Guthrie, Okla	533	St. Louis	130	109	97	84
	827	Chicago	150	129	107	89
	1,591	New York, all rail	197	166	140	119
		New York, ocean and rail	177	151	128	114
Fort Worth, Tex	734	St. Louis	137	121	104	96
	986	Chicago	157	137	116	106
	1,729	New York, all rail	224	196	162	137
		New York, ocean and rail	162	141	120	109
Dallas, Tex	685	St. Louis	137	121	104	96
	965	Chicago	157	137	116	106
	1,697	New York, all rail	224	196	162	137
		New York, ocean and rail	162	141	120	109

To—	Mileage.	From—	1.	2.	3.	4.
Houston, Tex	819	St. Louis	137	121	104	96
	1,274	Chicago	157	137	116	106
		New York, ocean and rail.	82	69	60	51
Galveston, Tex	869	St. Louis	137	121	104	96
	1,331	Chicago	157	137	116	106
		New York, ocean	75	63	55	38
Shreveport, La	565	St. Louis	117	101	87	74
	956	Chicago	137	117	99	84
	1,508	New York, all rail	134	117	101	86
		New York, ocean and rail.	116	105	91	80
Little Rock, Ark	345	St. Louis	100	85	65	45
	625	Chicago	120	101	77	55
	1,296	New York, all rail	150	125	100	75
		New York, ocean and rail.	127	107	87	67
New Orleans, La	706	St. Louis	90	75	65	50
	912	Chicago	110	90	75	58
	1,344	New York, all rail	118	98	78	61
		New York, ocean	70	60	50	40

MERCHANTS' TRANSPORTATION ASSOCIATION,
St. Louis, May 11, 1905.

Mr. MURRAY CARLETON,
St. Louis, Mo.

DEAR SIR: At a meeting of the board of directors of the Merchants' Transportation Association held this day a resolution was unanimously adopted approving the action of the Business Men's League in sending a committee to Washington to protest against placing rate-making power in the hands of the Interstate Commission.

It was also unanimously resolved that the committee appointed for that purpose, of which you are chairman, be authorized to represent this association by appearing before the Senate committee in opposing and arguing against the bill.

Yours, truly,

W. L. KINGDON, *Secretary.*

Whereas there is pending before the United States Senate a bill known as the Townsend bill which, if it becomes a law, will give into the hands of the Interstate Commerce Commission the power to make the railway freight rates of the United States; and

Whereas the Interstate Commerce Commission is and must always be by the process of its appointment a body appointed politically and not by the shipping interests of the country, and therefore unfamiliar with the intricate subject of rate making; and

Whereas the Townsend bill does not touch at all the worst evils of the relations between the shippers and the railways, which are the rebate and private-car abuses, the rebates being already prohibited and prevented by the Elkins bill, and the private-car injustice being entirely ignored by the Townsend bill; and

Whereas while the shipping interests of St. Louis are not satisfied with the rate situation and are successfully working for its improvement with the traffic associations, they know that to give the rate-making power to the Interstate Commerce Commission would so disorder existing interstate rate conditions as to completely unsettle business in the trade territory of St. Louis, and that the city would lose a large part of the business built up through these rate conditions during these past twenty years; and

Whereas this same disturbance of the existing conditions would take place all over the country, affecting every large jobbing and manufacturing center and obliging manufacturers and shippers of every kind to adjust and readjust their business frequently to the fluctuating rate conditions so that all business in the United States depending upon shipping would lose is stability:

Be it resolved, That the shippers of St. Louis represented in the Merchants' Transportation Association of St. Louis earnestly ask that the Senate will not

pass the Townsend bill, and request that the committee appointed by the Business Men's League which is to appear before the Senate Committee on Interstate and Foreign Commerce will also represent this organization in opposing and arguing against the bill.

INTERSTATE MERCHANTS' ASSOCIATION,
St. Louis, Mo., May 11, 1905.

Mr. MURRAY CARLETON,
St. Louis, Mo.

DEAR SIR: At a meeting of the board of directors of the Interstate Merchants' Association, held this day, a resolution was unanimously adopted approving the action of the Business Men's League in sending a committee to Washington to protest against placing rate-making power in the hands of the Interstate Commission.

It was also unanimously resolved that the committee appointed for that purpose, of which you are chairman, be authorized to represent this association by appearing before the Senate committee in opposing and arguing against the bill.

Yours, truly,

INTERSTATE MERCHANTS' ASSOCIATION.
By V. O. SAUNDERS, *Manager.*

Whereas there is pending before the United States Senate a bill known as the Townsend bill, which, if it becomes a law, will give into the hands of the Interstate Commerce Commission the power to make the railway freight rates of the United States; and

Whereas the Interstate Commerce Commission is and must always be, by the process of its appointment, a body appointed politically and not by the shipping interests of the country, and therefore unfamiliar with the intricate subject of rate making; and

Whereas the Townsend bill does not touch at all the worst evils of the relations between the shippers and the railways, which are the rebate and private-car abuses, the rebates being already prohibited and prevented by the Elkins bill, and the private-car injustice being entirely ignored by the Townsend bill; and

Whereas, while the shipping interests of St. Louis are not satisfied with the rate situation and are successfully working for its improvement with the traffic associations, they know that to give the rate-making power to the Interstate Commerce Commission would so disorder existing interstate rate conditions as to completely unsettle business in the trade territory of St. Louis and that the city would lose a large part of the business built up through these rate conditions during these past twenty years; and

Whereas this same disturbance of the existing conditions would take place all over the country, affecting every large jobbing and manufacturing center and obliging manufacturers and shippers of every kind to adjust and readjust their business frequently to the fluctuating rate conditions, so that all business in the United States depending upon shipping would lose its stability:

Be it resolved, That the shippers of St Louis, represented in the Interstate Merchants Association of St. Louis, earnestly ask that the Senate will not pass the Townsend bill, and request that the committee appointed by the Business Men's League which is to appear before the Senate Committee on Interstate and Foreign Commerce will also represent this organization in opposing and arguing against the bill.

STATEMENT OF MR. GEORGE F. MEADE.

The CHAIRMAN. State your name, residence, and occupation.

Mr. MEADE. My name is George F. Meade, of Boston. I am a produce and commission merchant, and president of the National League of Commission Merchants of the United States.

The CHAIRMAN. Whom you represent here?

Mr. MEADE. Whom I represent here.

The CHAIRMAN. By authority? Have you a resolution authorizing you to do so?

Mr. MEADE. I also appear here as a member of the car lines committee of that body, and also as president of that body; also as representing the Boston Fruit and Produce Exchange, a body of 700 business men in Boston, the largest of its kind in the country.

The CHAIRMAN. Have you resolutions showing your authority to act?

Mr. MEADE. Not at this particular hearing. I had them for the House hearing, and have appeared before your body on two or three occasions in favor of the rate bill, known first as the Nelson-Quarles bill, and then as the Cooper-Quarles bill.

Senator CULLOM. Were you before the House committee?

Mr. MEADE. Yes, sir.

The CHAIRMAN. You wish to speak briefly with reference to the private-car system, refrigerator cars, do you?

Mr. MEAD. Yes, sir; but, very briefly, I might say that both of the bodies I represent here are in favor of the principle contained in the Nelson-Quarles and the Cooper-Quarles bill—that is, of conferring the power upon the Interstate Commerce Commission of substituting, after an investigation, what they think is a fair rate in place of an unfair one. We feel that the railroad business is of necessity a monopoly, and that there are but two ways of regulating it—one by competition, one by supervision; and that it should be supervised by some competent body.

The CHAIRMAN. You wish to give your views to the committee from that standpoint and from the standpoint of being opposed to the private-car system, as I understand?

Mr. MEAD. Yes, sir; very briefly, on the first point.

The CHAIRMAN. How long a time will it take you?

Mr. MEAD. That I will leave to the committee. Of course I could stand here and talk probably for two hours on the private-car-line business.

The CHAIRMAN. We could not very well give you as much time as that.

Mr. MEAD. No; and I do not want to take it. I want to get at the essential points.

The CHAIRMAN. We would like you to be just as brief as you can in answering questions, and confine yourself to the question before the committee.

Mr. MEAD. Then, I think, Mr. Chairman, that I will let the rate part of it go by simply saying that we believe the opinion given by Attorney-General Moody covers the situation as we view it.

The CHAIRMAN. Then you will confine your remarks to the other question.

Senator CULLOM. You believe in amending the law so as to give the Commission power not only to determine whether an existing rate is reasonable, but, if it is not reasonable, to declare what it should be?

Mr. MEAD. Yes, sir. We think it would be only fair to the railroads to simply reverse the conditions that have been existing, because according to their testimony it takes four years now to carry a case through the courts. That is said to be the average length of

time that is taken to carry a case through the Interstate Commerce Commission. Under the present condition, when the Commission have found that a rate is unfair, the unfair rate holds until the courts have decided otherwise, and during that time the shippers are obliged to pay that rate; and we think it would be fair to reverse the conditions in that respect.

Senator CULLOM. You are not disposed to cut off the court from the hearing?

Mr. MEAD. No, sir. We believe that the railroad interests should all be preserved by their right of appeal, first to the circuit court, and then to the Supreme Court.

The CHAIRMAN. Now, Mr. Mead, it is about 5 o'clock.

Senator FORAKER. It is 5 o'clock, our usual adjourning time; and unless you could complete your statement this evening we had probably better adjourn at this point.

Mr. MEAD. I do not think I could present the matter properly in less than an hour, because we are especially aggrieved by this Armour car line business, for the reason that the exclusive contract applies to our line of business only; and we are the people that suffer to pay the enormous dividends of the private car lines.

The committee thereupon adjourned until to-morrow, Wednesday, May 17, 1905, at 11 o'clock a. m.

WEDNESDAY, *May 17, 1905.*

The committee met pursuant to adjournment.

Present: Senators Elkins (chairman), Cullom, Kean, Dolliver, Foraker, Clapp, and Carmack.

CONTINUATION OF STATEMENT OF MR. GEORGE F. MEAD.

Senator KEAN. You were on the stand when we adjourned yesterday, I believe?

Mr. MEAD. Yes, sir.

Senator KEAN. Proceed with your statement.

Mr. MEAD. I want to say just a word, gentlemen, as to who compose the National League of Commission Merchants, in whose interest I appear. That body is composed of constituent leagues in 27 of the largest cities throughout the country, and in its membership, while we have not all the larger members of the trade in different cities, we have a majority of them, and among our members are a great many who are now operating and buying fruit in carload lots at the railroad stations. The character of that business has changed very materially in the last eight or ten years, so that a smaller proportion of the products are shipped on commission, and a much larger proportion is bought by the commission men outright at the railroad station.

I desire to say right here that my testimony may be somewhat disconnected, but I hope the members of the committee will feel free to question me at any time in order to clear up any point desired.

We feel that we have an essential grievance against the private-car lines on account of the fruit and produce business being singled out for discrimination by the car lines, and we have to stand the brunt of the charges that enable this company to pay their enormous

dividends. It was shown at the two hearings in Chicago before the Interstate Commerce Commission, in June and October last, that the exclusive contracts of the private-car lines applied to the fruit and produce men, so that we are the men who have our noses to the grindstone, and our share of the profits of the berry and fruit business is swallowed up by the icing charges of the private-car lines.

Mr. Robbins would evidently lead you by his testimony to infer that, as an individual, I am opposing private-car lines. I want to state that neither myself nor any of the organizations I represent have any hostility to the railroads or private-car lines as such. That have any hostility to the railroads or private car lines as such. Our opposition is against improper practices, excessive and unreasonable charges, and the discriminative methods of the private car lines.

Mr. Robbins spoke of my connection with a car company. Briefly, I may allude to that so that it may be cleared up. When the national convention of our league met in Louisville a car lines committee was appointed and given full charge of this matter. That committee was appointed because of a paper having been read at the convention by Mr. John C. Scales, of Chicago. That committee was given full powers in the matter, and $1,000 for our expenses. Upon my return to Boston two or three months after that convention a new system of refrigeration was called to my attention. It, of course, interested us at that time, and we built a car for experiment, and are yet experimenting with that one car. We have no intention of ever forming a car-lines company, for we do not believe in it, but we do feel that if that car is better than any now in existence, it should be used by the railroads and associations of shippers, all on like terms.

Senator KEAN. Was that the one car to which Mr. Robbins referred in his testimony?

Mr. MEAD. Yes, sir.

Senator KEAN. You still have a million dollars capital?

Mr. MEAD. Yes, sir; but I am not an officer of the company now. Mr. Robbins said I was president.

Mr. Robbins evidently sought in his testimony to convey the impression to this committee that the produce commission men were not interested in this proposition. But it is not strange that we are intensely interested in the proposition, because the car lines companies to-day, as the magazines have stated, are, I believe, the greatest trust in the country. They started out with the evident intention and object to get absolute control of the perishable food products of the country, and to-day they can practically make the prices of all perishable food products through their control of refrigeration.

In connection with that I may say that at some time or another the Armour Car Lines have handled almost every kind of fruit and produce grown, and I want to read to you from the testimony of Mr. Urion, presented at the June hearing in Chicago, for it was largely upon the request of the National League of Commission Merchants that the June and October hearings were held with reference to private car line matters. This is the testimony of the Armour Car Lines counsel at the June hearing. He says:

It is a fact that Armour & Co. are engaged in the produce business, handling country produce, butter, eggs, and poultry, and thus have come in competition with the commission men. We do not claim to have a halo around our head, but

do claim that by reason of buying produce in Michigan, and by reason of the use of Armour cars on the two lines of road in question, we have enabled the growers to get out of the clutches of a certain coterie of commission men.

They are not satisfied with the enormous charges for icing the cars, but add to that a mileage of three-fourths of a cent per mile, and upon their own statement they start out to take the business of the country away from the commission men. He testifies further:

They have established at several points in the State of Michigan houses for the purchase of onions, potatoes, butter, eggs. * * * That system of establishing houses has been followed at several points in Michigan and, naturally, has made enemies of the commission men.

Senator KEAN. What is your objection to their establishing houses and buying things?

Mr. MEAD. Simply that they are engaged in the produce business, and they can put the produce men out of business.

As I said before, I hope the committee will feel free to ask me questions at any time, because it is in that way that the committee will be able to get at the facts I want to place before it.

In answering the question of the Senator, let me state that previous to 1900 the rates on peaches from Michigan to Boston were embraced in the freight rate of 79 cents a hundred. That was the freight to Boston on peaches previous to 1900. That included all the service, icing, and refrigerator-car service. In 1900 the Pere Marquette Railroad and the Michigan Central made a charge of $20 per car for refrigerating the cars to Boston.

Senator DOLLIVER. In addition to the rate you mention?

Mr. MEAD. Yes, sir. I want to state that that $20 rate was applied upon the 79-cent rate that previous to that time had included all charges.

Senator FORAKER. That is, the 79-cent rate covered icing?

Mr. MEAD. Icing and everything.

Senator FORAKER. Was the transportation made in refrigerator cars?

Mr. MEAD. Yes, sir.

Senator FORAKER. The same kind of cars they have now?

Mr. MEAD. That was in a Merchants' Despatch car, I think; not an Armour car. In 1903 Armour & Co. came upon the scene with an exclusive contract. They then made their charge from Michigan to Boston $55 per car.

Senator FORAKER. What year was that?

Mr. MEAD. I think they began it in 1902; I am not sure. I think the Armour exclusive contract went into effect in 1902, except at Grand Rapids.

Senator FORAKER. It was 79 cents per 100 until 1900, and then it was $20 additional from 1900 on?

Mr. MEAD. Until the exclusive contract came in; when that exclusive contract came into effect in 1902 it did not apply to Grand Rapids because that was a competitive point, but that was one of the greatest cases of discrimination ever known. This $20 rate was applied upon the 79-cent rate. When the Armour people came in they made an exclusive contract and put up the rate to Boston to $55 per car. That was also an increase above the $20 rate and the 79-cent rate, so that Armour at that time received in the neighborhood of $70 per car; he received a rental of $55 per car and a mileage of three-fourths of a cent per mile for those cars.

Senator CULLOM. Fifty-five dollars for the time occupied in the trip?

Mr. MEAD. Yes, sir; from Michigan to Boston.

Senator DOLLIVER. That is the icing charge?

Mr. MEAD. Yes, sir; and other car service. In addition he received a mileage of three-fourths of a cent both ways. This would be a total charge of about $70 per car.

Suppose Mr. Armour had wanted to buy peaches in Michigan. If they had chosen then to buy peaches in Michigan they could have taken them to Boston and sold them for $35 a car and made a profit—that is, the difference between $35 and $70 less the actual expense of the icing.

Senator KEAN. What do peaches ordinarily sell for in Boston?

Mr. MEAD. They vary according to the season.

Senator CULLOM. What is the capacity of the cars of the Armour Car Lines?

Mr. MEAD. I think the testimony at the different hearings shows that they hold 4 or 5 tons.

Senator CULLOM. What is the capacity of the other cars?

Mr. MEAD. You mean the Merchants' Despatch?

Senator CULLOM. Yes.

Mr. MEAD. I could not tell you.

Senator CULLOM. You do not know?

Mr. MEAD. No, sir.

Senator FORAKER. I understand your statement is that there is a profit of $35 per car in these charges.

Mr. MEAD. No; I do not say that. I say that if Armour & Co. had chosen to buy peaches and other produce in Michigan, which they might have done just as well as to buy potatoes or onions, then when they buy that produce in Michigan they would have the car rental plus the mileage—have that much advantage of the shipper. Do I make that clear? If Mr. Armour to-day ships in his own cars his own products he has the advantage of the commission man to the extent of the return he receives plus his car rental and mileage and less the actual expense of ice.

Senator CULLOM. Are you engaged as a shipper?

Mr. MEAD. No, sir; I am a receiver and produce man in Boston. Have been there for thirty years.

So far as the cost of ice was concerned at Grand Rapids, at the hearing in Chicago last Friday testimony was adduced by the man who had the contract to furnish ice for Armour & Co. I attended that hearing at Chicago last Friday, and also the October hearing in Chicago, and this is from the testimony given before the Interstate Commerce Commission:

Joseph Horner, of the Consumers' Ice Company, at Grand Rapids, who until recently supplied the ice for all Armour cars at that point, testified that he received $2 per ton for icing cars when making deliveries from wagons, and $1.65 per ton when filling the cars from a trestle.

Mr. Robbins testified here Monday, as well as at previous hearings, that the average price people pay for ice was $2.50 per ton.

Senator FORAKER. He said here yesterday that it was $2 a ton at Grand Rapids, as I remember, and that at other points it was as high as $2.50.

Mr. MEAD. I am speaking of the general testimony at previous

hearings, which was that the price was about $2.50 a ton. They have contracts with the Northwestern road by which the ice is charged to them at $2.50 a ton, with a rebate of $1 a ton made. The testimony showed that the St. Paul road billed ice to the Armour Company at $2.50, with a rebate of $1, and the Texas Pacific at $3.50, with a rebate. So that upon the actual cost of ice we believe the charges of the Armour Car Lines are extortionate, and in some instances two or three hundred per cent over and above the previous rate that applied before the exclusive contract. Our claim is, therefore, that there is no uniformity in that charge; it may be one price to me and another to my neighbor.

Senator KEAN. I see you made a statement before the House committee last session in which you charged that Armour & Co. charged $2.25 per ton and the Pennsylvania only $2.50.

Mr. MEAD. That is an erroneous statement. It is not correct.

Senator KEAN. That is not correct?

Mr. MEAD. No, sir. At that time Armour & Co. controlled the icing privileges at Jersey City and all the refrigerator cars that went out of Jersey City.

Senator KEAN. Do you mean to say that the Pennsylvania Railroad——

Mr. MEAD. I mean to say this: That the Pennsylvania Railroad leased that privilege to the Armour Company, together with the land on which the plant was situated, for that land belonged to the Pennsylvania Railroad.

Senator CULLOM. Will it interrupt your statement if I should ask you a question?

Mr. MEAD. No, sir. I prefer that the committee ask questions whenever they see fit, for in that way they will draw out the facts that I want to get before the committee.

Senator CULLOM. I did not know that you had taken that position.

Mr. MEAD. I am perfectly willing to be interrupted at any time.

Senator FORAKER. He said that he had no objection to that.

Senator CULLOM. I was not in the room at the time.

Mr. MEAD. I think in that way you will get the facts.

Senator CULLOM. Are you interested in any new refrigerator company?

Mr. MEAD. I had already explained that before you came in.

Senator CULLOM. You might answer again.

Mr. MEAD. I had answered to this effect: That a new system of refrigerator cars was brought to my attention after the Louisville convention, to which I have referred, and when the car lines committee was appointed I, in conjunction with the other gentlemen, investigated it, and it promised to be better than anything then in existence. In connection with five other men we put our hands in our pockets and built a car, with which we are now experimenting; not, however, for the purpose of forming a private car line, for we do not believe in that method. But if we find it possible to build a better car than the kind now in use then we want the railroads, if they see fit, to adopt it and use it; but it should be open to railroads and everybody alike on the same terms.

Senator CULLOM. Have you a patent on it?

Mr. MEAD. It is patented, but no stock has been issued, and I am not an officer of the company at the present time. The thing is in a ntative condition at present.

Senator FORAKER. What is about the cost of that car?

Mr. MEAD. This car that we built and paid for would not be any criterion of the cost of a line of cars. We think it will cost about $1,100, though this car cost much more.

Senator CULLOM. As I understand, you are undertaking to get this car before the public for use?

Mr. MEAD. At some time, if the public approves of it. I do not know but it is just as proper for the fruit man to find a better car than the one in existence as it is for the car lines people to engage in our business. We feel that it was a perfectly proper undertaking, and one for the public benefit.

Senator CULLOM. I do not question your right to invent a new car; that is entirely proper, if you feel like doing it. Have you appeared anywhere else on this subject heretofore? Have you appeared before the House committee?

Mr. MEAD. Yes, sir; and I have been before your committee four or five years ago. I think I have attended all the Interstate Commerce Commission hearings on this subject—one in Chicago in June, one in October, and the one last week.

Senator CULLOM. Your views, therefore, are pretty well known on this subject?

Mr. MEAD. I do not know how that is. We feel that the Armour Car Lines not only has a monopoly of the fruit-carrying business, but also has at its mercy communities, and can make or break them at will.

I think 1902 was the time when the exclusive contract went into effect in Michigan, but it did not apply to Grand Rapids, because that was a competitive point. So that in Grand Rapids in that year one party told me he shipped out between 250 and 260 carloads upon which the icing charge was $7.50 to $10 per car, while 14 miles from there, where the exclusive contract prevailed, the rate was $45 to $50 a car, and that gave the Grand Rapids people, of course, a distinct advantage. We have no idea what the charge is to be upon a refrigerator car.

Senator CULLOM. You say you have no idea what the charge is going to be. I suppose no one can tell exactly what amount it is going to cost to get a car from Grand Rapids or anywhere out West to Boston without knowing exactly what time the car will get through?

Mr. MEAD. That is true. They are subject to delays.

Senator CULLOM. And it is also necessary to know how much ice it will require to refrigerate it and preserve the goods.

Mr. MEAD. But they are supposed to have a tariff to cover that.

Senator CULLOM. You have the right to have that information, have you not?

Mr. MEAD. I presume we might, but there are other charges that come in for different things.

Senator CULLOM. And they are what?

Mr. MEAD. We do not know what they are for. The trouble is that when we receive a freight bill it does not specify. The railroads collect these charges in a lump sum and turn them over to Armour & Co. We get a freight bill, the total amount being perhaps $350, but there is nothing in that freight bill to indicate what the charges are for and what portion of them are Armour charges.

Senator CULLOM. They do not furnish that information?

Mr. MEAD. Not at all. We do not know what the items of the bill are, nor do we know what part of the whole bill they turn over to Armour & Co.

Senator FORAKER. One of your complaints is that these schedules of charges are not filed with the Interstate Commerce Commission?

Mr. MEAD. That is one of the things we want to bring about. In other words, at the present time the railroads allow private car lines to take our business by the throat and demand whatever they see fit from us, and we have no voice whatever in the matter. When you talk about discriminations, here is one instance: A receiver in Chicago received a carload of tomatoes from a point in Tennessee. I have the exact facts here in a pamphlet, if I can find them. Perhaps I can give them as well as to read them. This party received a carload of tomatoes from a road having an exclusive contract with Armour & Co. The distance was something like 522 miles, I think, from Gibson, Tenn. That came over a line having an exclusive contract with Armour & Co., and the icing charge was $73.92.

Senator CULLOM. That was a separate item, so you knew what that was.

Mr. MEAD. We knew what that was, because the party refused to pay the charge and a lawsuit was begun.

Senator FORAKER. How long was that car in transit?

Mr. MEAD. I can not tell you. I am not familiar with that section.

Senator KEAN. You said you were familiar with this case.

Mr. MEAD. I am familiar with the facts of the case, but I am not familiar with the distances between these points. My business is in the East, and this case occurred in Tennessee.

Think of it for a moment; under the Armour exclusive contract, from Gibson, Tenn., 522 miles, $73.92; from Memphis, Tenn., 527 miles, practically the same distance, under free refrigerator competition, $15. Now, the difference between $73.92 and $15 is $58.92, and what does that $58.92 represent? It represents an imposition upon the public so intolerable and a traffic situation so unendurable that the exclusive contract which makes these horrible conditions possible must be destroyed and replaced by free and natural competition under the operation of just law.

Senator KEAN. We have had that same instance before.

Mr. MEAD. I think so. That is one of the difficulties under which we have to work. We have to pay the bill in a lump sum, without knowing whether there are any correct refrigerator charges upon it or not.

Senator FORAKER. Can you give the date when that charge was made?

Mr. MEAD. This was brought out at the June hearing last year in Chicago.

Senator FORAKER. Was it shortly prior to that time, or is that some old case?

Mr. MEAD. Oh, no; it was last season.

Senator FORAKER. Something recent?

Mr. MEAD. Yes, sir.

Senator FORAKER. Something in last season's business?

Mr. MEAD. Yes, sir.

Senator CULLOM. Do you know what kind of a car that was—what its capacity was?

Mr. MEAD. It was an Armour car.

Senator KEAN. What was its capacity?

Mr. MEAD. I could not tell; their capacity does not vary very much.

Senator KEAN. What is the capacity of the other car?

Mr. MEAD. About the same.

Senator KEAN. So that you know the capacity of the Armour cars?

Mr. MEAD. They do not vary to amount to anything.

Senator CULLOM. What was the icing capacity? Do you know anything about that?

Mr. MEAD. I do not know about that. But in answer to the Senator's question I am just reminded:

Again referring to the Ellis car of tomatoes, that we may still more fully understand the effect of the Armour exclusive contracts, we have to know that the distance from Gibson, Tenn., to Chicago is 522 miles, and from this point the Armours charged the Messrs. Ellis $73.92 for icing, while the icing charge by the Illinois Central Railroad from New Orleans to Chicago, a distance of 923 miles, is only $30 per car, so that in this instance the Armour exclusive contract enabled the Armour lines to charge $43.92 more for refrigeration for a distance of 522 miles than the Illinois Central, upon whose lines there are no exclusive contracts, charges for a distance of 923 miles; but if this statement shows an intolerable state of affairs, what shall we think when we are made aware that upon the selfsame day in which the Messrs. Ellis received this car of tomatoes from Gibson, upon which they paid the $73.92 icing charge, they received a like car of tomatoes from Memphis, which is a few miles farther from Chicago than Gibson, and upon this Memphis car the icing cost was only $15, and, to make matters worse, the car used from Memphis, upon which the icing cost was $15, was an Armour car, but hauled over a road where no exclusive Armour contract exists.

Senator CULLOM. One charge was $15 and the other was $73.92.

Mr. MEAD. Yes, sir. One road had an exclusive contract with the Armour Car Lines and the other had not.

I want to go back to the June hearing for a moment. After that hearing the Armour Car Lines issued an order, dated August 22, and to take effect September 1, that on and after that date the goods carried in cars of the Armour Car Lines would be owned by others than the Armour Company. But in January, 1905, it seems, by an advertisement in the Kansas City Packer, a paper said to be owned and controlled by Armour interests up to a few months ago, they were still in the produce business. (See clipping.) We do not know how long they will remain out of the fruit business. They can, of course, go back into it at any time.

Cold storage for apples.—We also buy and sell apples, potatoes, etc., for our patrons. Correspondence solicited.

ARMOUR PACKING COMPANY,
Kansas City, Kans.

In my own city, within two months, a concern has been organized, and that concern is owned and controlled by Armour interests, their clerks in Boston being the directors, with a nominal head. That is the J. F. Kimball Company, incorporated in Massachusetts, but the Armour interests control it and their employees are directors. They handle butter, eggs, and poultry, and when they ship their eggs and poultry in those cars they have the advantage of men engaged in that same business in Boston. It gives them opportunities to make deals with the railroads in numerous ways.

Senator FORAKER. What remedy do you recommend, Mr. Mead, for all this?

Mr. MEAD. It is our attitude, Mr. Senator, that the railroad com-

panies should be obliged to furnish all the equipment that is necessary in the transportation of whatever commodities we tender them for safe carriage.

Senator FORAKER. That they should furnish all the cars necessary or required for that transportation, regardless of the fact whether the railroads would have constant use for those cars?

Mr. MEAD. Yes, sir. If they undertake to do the business of common carriers, they should do that.

Senator FORAKER. Suppose the railroad company needed a thousand cars for a period of two or three months only, would you require them to equip a thousand cars for that short time, when for the remainder of the year they would have to remain idle?

Mr. MEAD. No, sir. We feel that that is a question we are not called upon to deal with. We feel that the company ought to be obliged to furnish all the equipment needed; that if refrigerator cars are needed, let the railroad get them from a manufacturing company, from a connecting line, or from a private car line company. We do not care from what source they get the cars so long as they furnish all the equipment under one published tariff charge.

Senator FORAKER. The railroads do get cars now from the private car lines?

Mr. MEAD. Yes, sir.

Senator FORAKER. You do not object to that?

Mr. MEAD. No, sir. Then the charges will be under control; then we will have some tribunal to which we may go. At present they can put up prices to any extent they desire.

Senator FORAKER. It has been suggested that Congress should put these private car lines under the interstate-commerce law.

Mr. MEAD. Simply make them common carriers?

Senator FORAKER. Yes.

Mr. MEAD. Our car lines committee do not approve of that.

Senator FORAKER. So I infer from what you state. But how would that meet this difficulty?

Mr. MEAD. In the way I have suggested. We think if you make them common carriers you bring into our business two common carriers engaged in the same business, and there would be a divided responsibility—the railroads would say the Armour Car Lines are responsible and the Armour Car Lines would say the railroads are responsible.

Senator CULLOM. What is it you want?

Mr. MEAD. We would like to have the railroads obliged to furnish all the equipment needed for the transportation of our business. They may get the cars from whatever source they see fit—from private companies, or lease them, get them from connecting lines or from holding companies, or whatever source. But we want the service to be performed by the railroad company under one published filed tariff charge, and then we can get at them. We can not to-day. We say the railroad might give us a published tariff rate that should include refrigeration, or, if they did not want to deal in refrigeration, they could make another tariff. We are not concerned where they get their equipment.

Senator FORAKER. Would you prohibit the private car lines from transporting their own goods in their own cars?

Mr. MEAD. I would prohibit them from engaging in our line of business.

Senator FORAKER. They might simply own cars and lease them to the railroads?

Mr. MEAD. The railroads could own all they wanted, or lease them, or borrow them from connecting lines, or buy them from manufacturing companies. We have no fight against the Armour people. We simply want to do away with some of these practices and abuses and discriminations.

Senator DOLLIVER. You did not go very fully into the question of putting these private car lines under the interstate-commerce law and treating them as common carriers.

Mr. MEAD. Do you mean now?

Senator DOLLIVER. You have not gone fully into that since I have been present.

Mr. MEAD. Pardon me, but I do not understand the trend of your question.

Senator DOLLIVER. It has been suggested that the interstate-commerce law be so amended as to include these private car line companies engaged in interstate commerce; that they should be subjected to the interstate-commerce law, and be required to share all responsibilities of a common carrier. What is your objection to that?

Mr. MEAD. Simply this: While we feel that that would be a distinct advantage over the present situation, yet that would bring into the problem two common carriers engaged in our business.

Senator DOLLIVER. What difference does that make if the rates are required to be published and filed with the Commission?

Mr. MEAD. It would bring a divided responsibility; for instance, if a car arrived in poor order the Armour Company would say the railroads were to blame and the railroad companies would say that the Armour Car Lines were to blame; so there would be a divided responsibility.

Senator DOLLIVER. That is a very small matter compared with the perpetual robbery of which you complain.

Mr. MEAD. Yes, sir. I want to speak of the condition that prevailed in Grand Rapids as to the discrimination in 1902, when one man could ship out at a cost of $10 a car and a man 14 miles from there would be obliged to pay from $45 to $55 per car.

Senator DOLLIVER. You would like to see Congress stop that?

Mr. MEAD. Yes, sir.

Senator DOLLIVER. By making the contracts void and illegal?

Mr. MEAD. We think they are illegal.

Senator DOLLIVER. Suppose that Congress should declare them to be void and put a penalty upon the exaction of such a contract?

Mr. MEAD. We would think that would be commendable, certainly. In 1902 the conditions prevailing there were such that the locality immediately beyond Grand Rapids was discriminated against.

Mr. Robbins was asked on Monday if he knew what the Michigan Central rate was to be from Michigan to Boston this year. At the hearing in Chicago on Wednesday last the Michigan Central people withdrew from the Armour contract, stating that it desired to carry out the order of the Commission explicitly; that they had built their

own cars, and perhaps I had better give you their language. Mr. A. D. Shaw, counsel for the Michigan Central, says:

Since the hearing of this proceeding a year ago the Michigan Central has entered into no contract with any company. We have a sufficient number of cars to take care of our own refrigeration during the entire season. We will handle the Michigan fruit products and furnish the icings in the cars at cost. This will be a great benefit to the shippers, as the price per ton for icing will be only $2.50. It will cost us that and that is all we will charge the shippers.

There is going to be discrimination existing again next year at Grand Rapids and in the Michigan belt. One man who can ship fruit over the Michigan Central will get a rate of $25 to Boston. The man who uses the Pere Marquette road will have to pay $45.

Senator Kean was asking me with reference to the icing station at Jersey City. Since the June hearing in Chicago the Pennsylvania Railroad has taken over the icing station at Jersey City, because they had only leased the land to Armour & Co. Now they have reduced the rate there on icing, I think, from $4 to $3 a ton.

Something was said Monday about no discrimination. We claim that it is the rankest kind of discrimination between localities, and we also claim that under the exclusive contracts the Armour Car Lines have communities absolutely at their mercy, and within two weeks that statement has been confirmed by shippers in North Carolina, where hundreds and hundreds of carloads of strawberries have been taken out and dumped.

Armour & Co. have an exclusive contract with the Atlantic Coast Line to carry and furnish all the facilities for taking those strawberries out of North Carolina, and yet on April 29, and I think four or five days following that, no cars were obtainable. I have telegrams and letters right here from that locality. Here is one:

Hundred carloads on track. No refrigerators. No shipments to-day.

J. W. YORK.

Senator KEAN. From whom is that?

Mr. MEAD. It is dated Chadbourn, N. C., May 2, 1905.

Senator KEAN. To whom is it addressed?

Mr. MEAD. To a commission firm in Boston.

Senator KEAN. Name them.

Mr. MEAD. York & Whitney. Here is a letter, dated May 3, from Chadbourn, N. C.:

CHADBOURN, *May 3, 1905.*

Mr. F. M. LEONARD, *Boston, Mass.*

DEAR SIR: It looks now as if the berry business would be over by the time we get cars. I have 1,200 crates on the platform at Clarendon marked to you, but they will never go out as they have already spoiled.

There were 4 cars rolled into Chadbourn about 10 o'clock last night. That was all the cars that came here yesterday in this whole section for the two days, Monday and Tuesday. There is surely 125 cars left on the ground and platform. This morning they have a lot of box cars placed in here. I think the railroads are going to load them and take them away. This is the greatest fall down I ever saw or expect to see in the berry business.

Yours, truly,

C. STURTEVANT.

Here is another:

CHADBOURN, *May 7, 1905.*

Mr. F. M. LEONARD, *Boston, Mass.*

DEAR SIR: There were about 65 cars of berries picked in this section yesterday, and at 5 o'clock last night 25 refrigerator cars rolled into Chadbourn.

They left 4 cars here at Chadbourn and sent the other 21 all over this section. Clarendon had 2 so I got 1 car there. I tried to get a car from Tabor, but did not get it. They promised to have 15 cars more for Chadbourn before 12 o'clock last night, but they did not come in until this morning and there were only 11 then, and they were not iced. So all the berries picked here yesterday but 25 cars are left on the ground and platform. They will not be loaded only for the dump. Yesterday a solid train of box cars piled to the roof were taken to the dump. We have not had but 1,800 crates this week, and I would have easily moved 5,000 if a car shortage had not come.

Monday night I had about 700 crates out and 900 left over. Tuesday I marked 900. I surely had my plans laid to move them this week, but Tuesday, Wednesday, and Friday I could not get a car, as there were only 5 or 6 a day came into the whole country. There are 11 cars in sight for to-morrow's business and the company do not know as there will be any more.

Yours, truly,

C. STURTEVANT.

Senator KEAN. To whom is that letter addressed?

Mr. MEAD. F. M. Leonard, Boston.

Mr. Robbins testified that their loss would be $75,000 on account of the inability of the railroads to furnish cars. Whether that loss will be paid by the Armour Car Lines or by the railroads we do not know. We feel that the roads should pay it, but the total losses will probably be $300,000.

But this is the serious feature of that matter; the strawberry grower who does not pick his fruit and haul it to the railroad and tender it to the railroad company has no means of redress. No consequential damages can be collected. He could only recover from the railroad in case he picked his berries and tendered them to the railroad, and unless he does that he has got to lose his year's work.

Senator FORAKER. What was the excuse Mr. Robbins gave for not being able to furnish cars?

Mr. MEAD. I do not know what excuse can be offered.

Senator CARMACK. Have they any good reason at all?

Mr. MEAD. I have tried to reason it out why they should allow that condition to exist, and I have read the investigations here and by the Interstate Commerce Commission.

Senator FORAKER. I have the impression that Mr. Robbins stated some reason why he was unable to furnish cars, but I do not find it at the moment.

Mr. MEAD. I desire to put in evidence the report of the car lines committee of the National League of Commission Men.

The CHAIRMAN. What is this statement about?

Mr. MEAD. It is the report of the committee of the National League of Commission Merchants, and in that report we give the reasons why these matters should be investigated before the Interstate Commerce Commission with a view to correcting the abuses, exactions, and practices of the different car lines.

The CHAIRMAN. All right. Let it go in as part of your statement.

Report of the refrigerator car lines committee of the National League of Commission Merchants of the United States, submitted to the thirteenth annual meeting, held at New Orleans, La., January 11, 1905.

[Committee: John C. Scales, chairman, Chicago, Ill.; George W. Bond, Baltimore, Md.; George F. Mead, Boston, Mass.; Charles A. Muehlbronner, Pittsburg, Pa.; Charles B. Ayers, Chicago, Ill.]

MR. PRESIDENT AND GENTLEMEN OF THE CONVENTION:

In presenting for your consideration the report of the work done in the past year by your refrigerator car lines committee, it is at the outset due the committee to say, that immediately upon its appointment it entered with spirit and alacrity upon the duties for which it was appointed, and from the hour of its appointment to the present moment that alacrity and spirit have never for a single instant flagged or halted. It is further proper to say that from first to last the committee has worked with the utmost harmony, and that each individual member has contributed, so far as lay in his power, his full share toward whatever results have been accomplished. This report would be incomplete if the great services of President Charles B. Ayers, Vice-President George F. Mead, George W. Bond, and Charles A. Muehlbronner, members of the committee, were passed unrecognized, as also its secretary, A. W. Smith. The prompt and efficient aid of our national secretary, A. Warren Patch, is also worthy of the highest commendation. Mr. George W. Bond and Mr. Walter Snyder rendered very efficient service in presenting to President Roosevelt the petitions of the league, touching the personnel of the Interstate Commerce Commission. The committee desires also to express its obligations to Mr. E. G. Davies, who, though not a member of the league, gave to its work, in season and out, his valuable time and his invaluable aid in enlightening the committee through his intimate knowledge of railroad affairs. To the official organ of the league, the Fruitman's Guide, and to the press at large throughout the country, the committee can not find words in which to express its obligations for the energetic and continuous help and support afforded, without which help and support the work of your committee would have been of but little avail.

The thanks of the committee are due to Messrs. J. C. Marchand, Martin S. Decker, and Frank Barry, attorneys and law officers of the Government, for their efficiency in the preparation of cases and their able presentation of the same to the Interstate Commerce Commission; also to all those organizations, firms, and individuals scattered throughout the country who have lent their aid and encouragement, and whose continued encouragement and aid are so essential to final success. With this brief preface the refrigerator car lines committee respectfully submits the following report of the work done and results accomplished since its appointment. At the outset the committee realized the magnitude of the task undertaken, which was nothing short, first, of arousing the producers, handlers, and consumers of the perishable products of the country to a sense of the dire evils surrounding refrigerator transportation; second, to abate those evils either through the courts under existing laws, or, if existing laws were inadequate, to appeal to Congress for remedial legisla-

tion. How to accomplish these two results was the all-important question. Manifestly the first work in hand was to appeal to the public through the press, which was done in the sending out of over 1,300 letters to the newspapers of the several States. A copy of these letters and the notice accompanying is made part of this report. The second work was to get in touch with as many agricultural and business organizations as possible, to the end that cooperation could be had in bringing cases before the courts and in going to Congress for remedial legislation should that be found necessary. The next step was to search for a proper test case. Among those offered and investigated, that of Messrs. C. A. Johnson & Co., of Sparta, Mich., was chosen should it be decided to institute a suit. Realizing, however, the great time that would elapse (at least two years) before a final decision could be reached, it was decided after mature deliberation that instead of instituting suit the committee should endeavor to get the Armour Car Lines Case before the Interstate Commerce Commission.

This endeavor was successful and an inquiry was instituted in Chicago which occupied the three days of June 2, 3, 4, 1904. At that inquiry the existence of exclusive contracts between the Armour Car Lines and the Pere Marquette and Michigan Central railways and the outrageous and iniquitous nature of those contracts was fully established. A large number of witnesses was in attendance from all parts of the country. All witnesses on behalf of the people giving their time and paying their own expenses of every kind, including transportation and hotel bills, while the witnesses upon behalf of the Armour Car Lines had all their expenses paid by that corporation, including transportation and hotel bills and in addition thereto a per diem. How small or large that per diem was it was impossible to ascertain; it may have been $1 per day per man, it may have been $100. As to the radical difference of manner in which the witnesses upon behalf of the people and those upon behalf of the Armour lines came to the inquiry, we leave each to draw his own inferences. The inquiry resulted in the Interstate Commerce Commission formulating an opinion; which opinion is made part of this report. The opinion, although expressing the belief that the icing charges of the Armour Car Lines were unreasonable and excessive, gave no relief to the communities suffering under the intolerable burden of these vicious contracts. Briefly summarized, the opinion, instead of going to the root of the evil, was simply an aggregation of suggestions that the Armour Car Lines and the railroads come together and fix up some sort of an icing charge which should be at least somewhat lower than that prevailing, and by this means allay the rising indignation of producers and shippers. Instead of paying heed to the mild suggestions of the Commission the Armour Car Lines, apparently reposing in the belief that both the public and the Government were powerless to interfere with their nefarious practices, contemptuously issued a new schedule of rates precisely and identically similar to the schedule had under consideration by the Commission, thus setting at defiance both the public and the Government.

The suggestions of the Commission that the railways and Armour lines confer together with the view of patching up some sort of an immaterial reduction in the excessive icing charges (for this is what

the suggestions really pointed to) was viewed by your committee with the greatest alarm. Fortunately the Armour Car Lines failed to grasp the situation, and your committee hailed with unbounded satisfaction the new Armour schedule fixing the icing charges precisely where they had been. It was feared that the Armour lines, following and taking advantage of the significant suggestions of the Commission, would issue a new schedule reducing in some insignificant degree the excessive icing charges and thus hold out the false hope that it was the intention to make still further reductions from time to time, when in point of fact the Armour lines never intended nor never do intend to reduce a single icing charge in any degree except when forced to do so either through expectation of or by the actual power of law. In view, however, of the startling events of the past two months, presaging the inevitable sweeping away of all unreasonable and excessive icing charges, it is not unreasonable to suppose that the future policy of the Armour lines will be to reduce those excessive charges step by step, and this is the one calamity the producers and handlers of the refrigerator car commodities of the country never must submit to. When the excessive icing charges are reduced, whether this is accomplished through the Interstate Commerce Commission, the Department of Justice, the courts, or Congress, severally or combined, the reduction once and for all must be to the actual cost of the icing, this actual cost to be included in the railway's published tariff rate. Time will not permit of an elaboration of the reasons why justly and lawfully the icing charges should and do properly constitute a part of the transportation charge, suffice that this contention is not based upon mere assumption, but is sustained by a large number of authorities, many of which are cited by Mr. Martin S. Decker in his admirable brief on behalf of the Government, presented to the Interstate Commerce Commission in the inquiry of June last, which brief is made part of this report.

The contention of your committee that the excessive icing charges when reduced must be reduced at one sweep to the actual cost of the icing and be included within the railway published tariff rate, is imperative if the perishable food products of this country are to be freed from the most intolerable, outrageous, and iniquitous transportation burden ever placed upon such an important element of a nation's food supply as is embraced in its fresh fruits, vegetables, and meats. Anything short of absolute and complete reduction, when reduction is attempted, would simply result in giving the independent car lines excuse for continuing the evil of excessive rates merely tempered from time to time by immaterial reductions forced from them by ceaseless effort and expense. Complete reduction at one time to a proper and reasonable charge is the only logical and equitable method to pursue, and we say to every producer and every handler and every consumer of the perishable food products of the country that they must stand shoulder to shoulder and obtain this full result or the battle for relief will not be worth the ammunition expended. It is proper to state that the moment the Armour Car Lines fully realized that a force was in the field which menaced their exclusive contracts, three attempts were made by the Armour interests for a personal conference with your committee, but it was deemed unwise to enter into any negotiations; it was felt such negotiations would either be

devoid of result or end in compromise, and as it was the unalterable opinion of your committee as to the necessity of absolute reduction in icing of cars to actual cost of the ice placed in the car bunkers, compromise was impossible, and therefore we believe your committee was justified in its refusal to enter into any conference in any manner whatever. The June inquiry having failed of immediate results, your committee, in conjunction with others, put measures on foot looking to a second and more extended inquiry, and such second inquiry was held in Chicago October 20, 21, 22, 1904. This second inquiry was much broader than the first, covering the entire country and all independent car lines, including live stock as well as refrigerator cars. This hearing also occupied three days, and a great number of witnesses, including a large number of the higher railway and independent car line officials, were summoned before it. Your committee retained counsel as in the first hearing and had a large number of important witnesses from all parts of the country.

The testimony of these witnesses was of a most startling nature as showing in still stronger light than at the June hearing the nefarious nature of the exclusive Armour contracts and the excessive and exorbitant icing charges and discriminations possible thereunder. Among the most important testimony was that of Messrs. J. Leverone, Charles B. Ayres, George F. Mead, W. W. Summers, William Loeffel, and William J. Ellis, all members of the national league, and E. G. Davies, general consignee, all of which testimony is made part of this report. Although upon the surface the two inquiries seemed to bear no fruit in the direction prayed for, nevertheless your committee did not abate in the least the prosecution of its task, and among a number of local (Chicago) cases of excessive icing charges it was determined to take up the case of Messrs. W. J. Ellis & Co. The Messrs. Ellis had received a car of tomatoes from Gibson, Tenn., upon which the freight charge was $111.67 and the icing charge $73.92. The Messrs. Ellis were instructed by your committee to refuse to pay the icing charge. This refusal resulted in the railroad accepting the freight charge and subsequently suing before a justice for the icing charge. This suit was lost by the Messrs. Ellis in the justice court and an appeal at once taken to the superior court. In the meantime your committee appointed a local finance committee, composed of Messrs. William Wagner, John W. Low, and Richard Coyne. This finance committee raised $405. It is proper to state that the whole of this amount was subscribed by Chicago league members with the exception of $20. A part of the funds raised was used in retaining counsel and defending and appealing the Ellis Case, and providing for its prosecution in the superior court. The Messrs. Coyne Brothers had a similar case of excessive icing charges; this on a car of melons from Indiana. The freight charge in this instance was $39.15, the icing charge $45. The Messrs. Coyne Brothers were likewise instructed to refuse to pay the icing charge. As in the Ellis Case, the railway accepted the freight charge, but in this instance, instead of the railway, the Armour Car Lines instituted suit for the icing charge. The cost of this suit was likewise taken care of by the local finance committee.

Your committee thus has two suits under way—one where the railway is suing for the icing, which service was supposed to be per-

formed by the Armour Car Lines; the other, where the Armour Car Lines are themselves suing for the icing service, which they were supposed to have performed—and yet in both these instances the icing service, while supposedly performed by the Armour Car Lines, was in reality performed by the railways, and in neither instance did the icing service performed by the railways cost more than $15 per car, while the shipper was charged in one instance $45, and in the other $73.92. A discussion of the intricacies and deviousness of railway and Armour Car Lines icing methods under the exclusive Armour contracts would be too tedious to enter upon at this time. Suffice that in nearly all instances the railway does the icing, the Armours do the charging, the railways do the collecting, and the producer at one end, and the consumer at the other, pay the bill.

Again referring to the Ellis car of tomatoes, that we may still more fully understand the effect of the Armour exclusive contracts, we have to know that the distance from Gibson, Tenn., to Chicago is 522 miles, and from this point the Armours charged the Messrs. Ellis $73.92 for icing, while the icing charge by the Illinois Central Railroad from New Orleans to Chicago, a distance of 923 miles, is only $30 per car, so that, in this instance, the Armour exclusive contract enabled the Armour lines to charge $43.92 more for refrigeration for a distance of 522 miles than the Illinois Central, upon whose lines there are no exclusive contracts, charges for a distance of 923 miles, but if this statement shows an intolerable state of affairs, what shall we think when we are made aware that upon the selfsame day in which the Messrs. Ellis received this car of tomatoes from Gibson, upon which they paid the $73.92 icing charge, they received a like car of tomatoes from Memphis, which is a few miles farther from Chicago than Gibson, and upon this Memphis car the icing cost was only $15, and, to make matters worse, the car used from Memphis upon which the icing cost was $15 was an Armour car, but hauled over a road where no exclusive Armour contract exists. Think of it for a moment. Under the Armour exclusive contract, from Gibson, Tenn., 522 miles, $73.92; from Memphis, Tenn., 527 miles, practically the same distance, under free refrigerator competition, $15. Now, the difference between $73.92 and $15 is $58.92; and what does that $58.92 represent? It represents an imposition upon the public so intolerable and a traffic situation so unendurable that the exclusive contract which makes these horrible conditions possible must be destroyed and replaced by free and natural competition under the operation of just law.

A third sitting of the Interstate Commerce Commission was held in Chicago in November, 1904, primarily to investigate Texas cattle transportation matters, but your committee took the opportunity to present the Ellis and Coyne Cases in an endeavor to have the Commission reopen the Michigan Case. In this your committee was unsuccessful, but succeeded in a direction far more important, inasmuch that it was given leave and instructed to file a brief with the Commission, covering virtually the whole question of excessive icing charges and virtually asking the producers and handlers of perishable products what in their opinion would be reasonable and just compensation for the icing of cars and what course in the premises the Commission ought to pursue. In compliance with the request

of the Commission, the brief was prepared and filed, and is made part of this report. At this hearing of the Commission the uniform bill of lading was also had under consideration, and your committee took the opportunity and responsibility of pledging the support of the national league to the efforts being made by organizations of producers and shippers everywhere to prevent this outrageous bill of lading being put into effect. As you are well aware, in addition to being nonnegotiable, this artful bill of lading provides that if the shipper ships his goods under the regular tariff rate, he must sign a relinquishment of all liability upon the part of the carrier. On the other hand, should the shipper not desire to release the carrier from liability, he is, under this iniquitous uniform bill of lading, required to pay 20 per cent above the regular rate. In other words, he is fined 20 per cent if he desires to hold the carrier responsible for the safe-keeping and conduct of his goods. The effect, and the intended effect, of this deeply concocted uniform bill of lading, if put into effect, would be to ultimately advance all freight rates 20 per cent. The first effect of relieving the carrier of liability under the regular rate would be to breed a slipshod, arrogant service which would in a short time force shippers to take what may be termed the 20 per cent rate service. It is logical to assume that at the beginning but a comparatively few shippers would take the 20 per cent rate service, and such shippers would soon become a favored class and their freight would be handled with celerity and care, while those who took what may be termed the ordinary rate service would have their freight handled according to the convenience or whim of the carrier. This condition regarding ordinary rate service would soon become so intolerable as to force all shippers to take the 20 per cent rate service, and thus a straight advance of 20 per cent would be effected, and this is precisely what this cunningly devised uniform bill of lading is intended to effect. It is, in fact, a new and devilishly conceived device for advancing freight rates. This newest and most reprehensible method of advancing freight rates calls for the united, active, and stubborn resistance of producers, shippers, and consumers everywhere, for all will be alike affected should the railroads succeed in putting this infamous uniform bill of lading into effect, which it is now threatened is to be done next April 1.

The dangers to shipping interests lurking in this uniform bill of lading are so numerous and far-reaching that the necessity for the formation of a shippers' national freight bureau, to be composed of at least one member from each shippers' organization in the United States, is emphasized and made clear, and measures should be at once put on foot looking to the formation of such bureau in order that combined effort may be opposed to the putting in force of this infamous imposition upon the traffic of the country. Your committee has not deemed it necessary to needlessly consume the valuable time of this convention with a detailed description of the minutiæ and methods employed in carrying on its work of the past year. Some of the methods employed can, in some slight measure, be gleaned from a perusal of such papers as were considered material, and which are made a part of this report. A brief summary, however, showing how the results thus far obtained were reached and what has been

accomplished, if not interesting, will at least be profitable. Starting with only vague rumors of the existence of exclusive contracts between the Armour Car Lines and numerous railways, the initial work of your committee was necessarily, constantly, and greatly hampered for want of exact knowledge, but persistent and unremitting effort at last unearthed a condition of affairs relating to the icing and transportation of the perishable food products of the country, scandalous and appalling beyond belief. It has been established by a great mass of incontrovertible and unimpeachable evidence that the exclusive Armour contracts provide that the railway entering into the same shall haul none but Armour cars, but if cars other than Armour be hauled that the Armour charge shall apply. The effect of this provision of the contract has been the annihilation of competition, which has enabled the Armour Car Lines to charge any price saw fit for icing, reaching, in many instances, to over 400 per cent above the actual icing cost. The investigations have further shown that the practical Armour monopoly of the meat products of the country, enabling that and affiliated firms to offer to the railroads the largest freight tonnage in the world of any one commodity, has been one of the most potent agencies used in forcing the railways into these exclusive contracts. The word from the Armour Car Lines to the railways has been: Make this contract or you get none of our freight. For example, one of the Pere Marquette contracts provides that the Armour lines should give that road not less than 40 cars of meat products per week, and for this freight the Pere Marquette Railroad handed over to the Armour Car Lines the immense fruit industry of the State of Michigan, with all the vast underlying interests attached thereto, to be plundered at will under a free license to exact any outrageous and exorbitant icing charge that, in its greed, the Armour monopoly saw fit to wring from the fruit producers of the State.

To grasp the full force and import of this sweeping contract it must be borne in mind that the Pere Marquette System carries (outside Lake Michigan shipments) practically the entire fruit output of the State of Michigan, and when we further bear in mind that like exclusive Armour contracts reach into nearly every fruit-producing district from one end of our country to the other, we can begin to realize the range and power of this stupendous monopoly which is placing upon the perishable food products of our nation an iniquitous and unlawful tax. A tax in the form of an icing charge, ranging from 50 to, in some instances, over 400 per cent above what the proper legitimate and lawful charge should be. Another, and not the least pernicious effect of these exclusive contracts, is that they prevent the railways from increasing their refrigerator-car equipment, thus enabling this huge Armour monopoly, if permitted to go on, to eventually own and operate (as it brings one railroad after another under its subjection) every refrigerator car in the United States. We now briefly summarize the work of the national league in the past year, which work has resulted—

First. In establishing the fact that exclusive contracts between the Armour Car Lines and numerous railways exist in all parts of the country; that these contracts are of the most pernicious character, stifling competition and enabling the Armour Car Lines to charge

any outrageous price for icing that cupidity may dictate, governed only by the last straw the traffic will bear, ranging in fact, as before stated, from 50 to over 400 per cent above the actual icing cost.

Second. That under these stealthy, exclusive contracts, both parties to the instrument claim exemption from the operation of law.

Third. The work of the league has compelled the Armour Lines to abandon (at least publicly) the fruit business, as evidenced by the following circular letter issued to its agents by the Armours:

ARMOUR & CO., GENERAL OFFICES,
205 La Salle Street, Chicago, Ill., August 22, 1904.

To all branch houses:

We have concluded to discontinue the fruit and produce business, as there seems to have grown up recently some opposition to us on the part of fruit and produce commission merchants. This feeling was particularly brought to our attention by remarks made at a recent convention of the National League of Commission Merchants in Louisville. We have, therefore, concluded to discontinue the handling of all produce of this description, and it has been decided that hereafter when the Armour Car Lines are employed in the transportation of fruits and other produce the contents of these cars will be owned by others and not by Armour & Co.

Yours, truly,

ARMOUR & CO.
E. WILSON.

Fourth. The league has been instrumental in inducing one of the largest railways of the country to refuse hereafter to collect the Amour icing charges where contested.

Fifth. It has succeeded in getting two important test cases into the courts, important cases whether lost or won, because two important questions are involved in these cases—the first question involved, Can a railroad collect charges for services performed in cars which it claims are not a part of its equipment and which charges are not embodied in its published tariff and which charges are notoriously exorbitant? Second. Can an independent car line, leasing its cars to a railroad—for this is what a mileage arrangement really is, thus making its cars for the time being a part of the railroad's equipment—claim exemption from the interstate-commerce act and all law, and charge whatever prices it deems fit for icing the said cars and collect said charges? But leaving these two questions for future settlement, we return to the results accomplished by the national league.

Sixth. The national league was instrumental in having two inquiries of the Interstate Commerce Commission held in Chicago, at which the whole matter of the Armour Car Lines was thoroughly ventilated, at one of which inquiries no less than seven briefs were presented, one of these being presented by your committee, and which brief is made part of this report. From this brief, as pertinent to this report, we make the following extracts regarding icing charges before and after the Armour exclusive contracts:

Before, from Michigan points to Chicago, $7.50; since, $25. From Lacota, Mich., to Rockford, Ill., $7.24 (average); since, $37.50. From Michigan points to Philadelphia, $20; since, $50. Michigan points to Boston, $20; since, $55. Michigan points to Pittsburg, $5; since, $35. It would be tiresome to continue the list of these outrageous and uncalled-for charges; charges which, though so outrageous, would seem moderate and modest compared to some in other parts of the country where like exclusive contracts exist, but which, under the circumscribed scope of this inquiry, we are not allowed to quote—notably upon railroads running into the southern portions of the country, controlled by exclusive Armour contracts, charges for icing are wrung from the producers of perishable products which would stagger belief.

Seventh. The league, in conjunction with other organizations and individuals, has awakened the Interstate Commerce Commission, the law officers of the Government and the Government itself, and the public at large to at least a partial, if not full, realization of the gravity of the transportation question and of the enormities which, under the guise of lawful business, have been perpetrated upon the people by connivance of powerful monopolies and great railroad systems, perpetrated alike upon the producers and consumers of our nation's entire food supply. This statement is absolute, for through the revelations brought to light through the efforts of this national league and other organizations and individuals and the Interstate Commerce Commission it is now common knowledge, known of all, that the same interests control (by two different methods, which time will not permit to elucidate) practically the entire meat and grain supply of the country.

For a long period it has been commonly known that one stupendous monopoly has been in absolute control of the oil, another of the anthracite coal, another of our entire meat output, and while there has been some faint knowledge that some sort of combination was in control of both meat and grain in one combine, the general public never for an instant dreamed, until revealed by the widespread agitation of the past year, that the entire meat and grain of the whole country was practically in the actual grip of one stupendous monopoly, whose ultimate aim was the control of not only the meat and grain, but, in addition thereto, all our perishable products, this latter object to be attained by so simple a means as control of refrigerator transportation. This last object once attained, three insatiate and conscienceless monopolies would be in control of five prime necessaries of our daily life, and it is certainly time we inquired, How can we escape the thraldom of this gigantic power which has woven the web of mystery around the dark and devious methods employed by railways and independent car lines in the jugglery of freight rates? It is time we inquired, What shall be done to abate these tremendous agencies of despoilment and ruin, despoilment alike of the producer and consumer, dictating to the one the price he shall take, to the other the price he shall pay? And from this dictation there is no escape so long as these great combinations of aggregated capital are permitted to stand in defiance of the public and the law. Fortunately, at last, the tangled skein of railway and independent car-line methods is being swiftly unraveled and the comprehensible manner in which all monopolies are to be brought within restraint of law is being clearly established. But all the efforts that have been put forth will be of no avail and no permanent and adequate results will be reached except through persistent and untiring effort. These great monopolies rely more upon the supineness of the public than upon any other weapon, either for aggression or defense. Their aim, when either attacking or attacked, is to tire the public out. Then let all awaken, ere it is too late, to a full realization of the necessity of prompt and tireless action and to a full realization that even the most tireless action upon the part of a comparatively few will be barren of results unless every individual bears his part in the efforts being made for the betterment of railway and independent car-line methods. This duty is but one, but this duty well performed, we shall be awake to the full performance of all our public duties, without which per-

formance at all times our very liberties may be jeopardized. Therefore let no organization, let no individual shirk the responsibility which rests alike upon all, of sustaining by voice and pen and action the earnest men, few or many, who, from one end of our land to the other, are pointing out these railway and independent car-line evils and giving their time, their thought, their energies in devising and in endeavoring to execute measures for their abatement. In matters pertaining to the public weal it is incumbent upon every citizen under any form of government, much more in a republic, to lend his individual aid for the betterment and conservation of public conditions if he expects those conditions to guard both his interests and his liberties.

Carelessness, indifference to duty, is a greater crime in public than even in private affairs. All history teaches the unerring lesson that the wrongs which have been heaped upon nations and which they first have borne in listlessness and carelessness, then in sullen submission, and finally in hopeless degradation, misery, and despair, have been borne by them only because of dereliction to duty and lack of public spirit. The chains which tyranny has forged upon the nations of the past, and even republics have not escaped, have been forged only upon those nations in which the mass of the citizens had become indifferent to their public duties and thus surrendered themselves an easy prey to greed, and pride, and lust of power. But history teaches another more fearful lesson, a solemn warning to all nations for all time—monarchies, autocracies, republics, all alike; the solemn and dreadful warning, that the nations which have been crushed have at last arisen in the fury of revenge and sweeping away every barrier of restraint, have wreaked the vengeance of their wrongs, alas, alike upon the guilty and the innocent. The pertinency of allusion to the necessity of every citizen neglecting no public duty is made apparent in the prosecution of the work of this national league and kindred associations, because it can not be expected, it is not within reason, that in a crisis in railway affairs such as our country is now facing a comparatively few men, widely scattered, can unassisted bring within restraint of law these gigantic monopolies, buttressed and fortified as they are by vast consolidated capital and limitless power. However, we can well take heart, for we have as our ally and leader one whose courage has never faltered in any crisis, but he can not, nor can any President, achieve full results unless sustained by the legislative and judicial power of the Government; and they in turn can accomplish nothing unless sustained by the people; the one great, first, last, and only power of a republic.

Finally, it is proper for your committee to state that in all its work there has existed upon its part neither bitterness nor enmity against either railways or independent car lines. It has been improper practices and excessive and unreasonable charges and discriminative methods against which its energies have been directed, and we believe this is the attitude of every member of this league. Your committee further believe, from a wide and varied opportunity of viewing the situation, that there is a crying necessity and a universal demand upon the part of those competent to express an opinion upon so important a subject that legislation should be at once enacted conferring upon the Interstate Commerce Commission the power to fix

a just and reasonable rate where a rate has been found to be excessive or discriminative, the said rate to stand unless or until set aside by action of the courts, but it is not understood nor intended in any sense that conferring upon the Interstate Commerce Commission the power of declaring a rate excessive or discriminative and fixing a just rate for the particular cases brought before it confers upon the Commission, in the remotest degree, the ordinary or primary rate-making power—that is, a power which we believe, under the competitive system, properly belongs to the railways, and a power which will never be attacked by the public unless driven to desperation through its abuse. Especial stress is laid upon abuse, because continued abuse of this power could easily be carried to a point where the rate-making power would be wrested from the railways and placed in the hands of the Government; but the good sense of the people will never permit this condition to be reached, if the railways, in their wisdom, acquiesce in proper legislation for the regulation of rates and abatement of abuses, and in addition thereto put forth proper efforts of their own to correct abuses and make just and reasonable rates. This done, all danger of governmental rate making and the growing and alarming danger of Government railway ownership will be averted. Government railway ownership is a calamity which looms darkening and large upon the horizon of the swiftly onrushing future, threatening not only our country's material welfare, but threatening the very purity and efficiency of our political system. It is time railway managers realized and realized fully that only just rates and clean practices can avert the growing and alarming danger of ultimate Government railway ownership; fully realized that in no other way can be averted this appalling menace, not only to the destruction of private property, but to the very stability of our free institutions, which Government ownership of such vast interests would certainly imperil. Proper Government supervision, not ownership, is the true solution of the vexed questions regarding control and ownership of these great highways of our country. However, when all is summed up, it rests at last in the hands of the railway managers themselves to decide, by the manner of the conduct of their trusts, whether these great interests shall remain private property, with a quasi-public character, or be, through the resistless force of public indignation, either lawfully or violently forfeited to the State.

Respectfully submitted.

JOHN C. SCALES, *Chairman.*

Mr. MEAD. I do not know whether the committee care to hear anything more about the situation in North Carolina, which simply shows how absolutely these communities are in the power of Armour & Co. where the exclusive contract exists.

Senator KEAN. How many cars did you ship out of Michigan in 1900?

Mr. MEAD. We only handle a few Michigan peaches, and have not handled them since 1898 or 1899, I think.

Senator KEAN. You did not handle any in 1902?

Mr. MEAD. No, sir. After the Armour contract went into effect and the freight was $55 per car, they went somewhere else on account of the price.

Senator KEAN. Where did they go?

Mr. MEAD. I do not know; perhaps to other sections nearer by

where refrigerator charges were less. I introduced, at the June hearing in Chicago, the receipts of peaches in Boston, to show that.

The CHAIRMAN. Have you concluded your main statement?

Mr. MEAD. Not quite, Senator.

The CHAIRMAN. How long will it take you to complete it?

Mr. MEAD. Ten or fifteen minutes, perhaps.

At the House hearing the car lines committee presented witnesses to testify as to the service of the refrigerator car lines. Among those appearing there was Mr. J. H. Hale, one of the large peach shippers out of Georgia. While they testified that the Armour Car Lines gave good service, they also testified to the fact that the charges were high and that they would like to have them reduced. This is a statement made to me in answer to a letter:

J. H. HALE, GROWER OF FRUITS AND NURSERY STOCK,
South Glastonbury, Conn., February 18, 1905.

Mr. GEORGE F. MEAD, *Boston, Mass.*

DEAR SIR: Yours of the 16th received, and it is a fact that, under average conditions of harvesting peaches in Georgia, a car can not be loaded 5 tiers of crates high, that being what is required to fill up to the minimum rate required by the railroads and refrigerator car lines, without the top tiers of fruit going to market in a more or less damaged condition. The only way we can be sure of getting the fruit through in fairly sound condition is to leave out 1 tier of crates, shipping but 4, but paying for 5. The larger series of Armour cars, which are billed at 22,500 pounds, if loaded 5 tiers high will take 560 40-pound crates, but we actually ship only 448 crates when loading 4 high; so have to pay a 20 per cent advance over the high freight rate of 85 cents per 100 pounds to New York, and 12½ cents refrigeration.

In other words, if the cars refrigerated perfectly the freight would be 36 cents per crate and the refrigeration 12½ cents, but to make ourselves safe we have to pay 45 cents freight and 15 cents refrigeration and proportionately higher when we come into New England territory.

I trust this explanation will make the matter clear to you. I tried to make it so to the committee in Washington the other day, but having been obliged to jump in in a hurry and anxious to catch a train, I perhaps did not make the matter as clear as I would have been glad to, and did not go into some matters that I wish now I had touched upon.

Yours, very truly, J. H. HALE.

While they charged for service five-high, Mr. Hale states he loaded them four-high, in order to get his peaches through in good order.

At this hearing Mr. Robbins was asked about rebates and discriminations. At the June hearing in Chicago testimony was presented tending to show that rebates were being paid. There was no attempt to conceal it.

Senator KEAN. Who was paying them?

Mr. MEAD. I read from the testimony produced there, Mr. Leeds testifying for the Santa Fe Railroad to the effect that when they went into the California business they had to pay the rates then being paid by the Armour lines—$25 per car to Chicago and $35 per car to the East. I have his testimony right here.

The CHAIRMAN. That was at the June hearing?

Mr. MEAD. Before the Interstate Commerce Commission in Chicago.

The CHAIRMAN. That is all printed, is it not?

Mr. MEAD. Yes, sir. All that testimony is printed, showing that rebates were being paid.

The CHAIRMAN. Were the rebates being granted by the Armour Company or by the railroad?

Mr. MEAD. I presume by the Santa Fe, as this testimony was given by Mr. Leeds, of the Santa Fe Dispatch.

The CHAIRMAN. Is that another private-car system?

Mr. MEAD. That is a private-car system belonging to the Santa Fe Railroad; owned and operated by it.

The CHAIRMAN. The testimony is that they were openly paying rebates?

Mr. MEAD. Openly paying rebates.

The CHAIRMAN. That is, the Santa Fe Railroad was doing that?

Mr. MEAD. Yes, sir; Mr. Leeds's testimony is to that effect.

The CHAIRMAN. When was that?

Mr. MEAD. In June, 1904.

The CHAIRMAN. We want that testimony before the committee. That appears to be an open violation of the law. Why was not that case taken before the Interstate Commerce Commission promptly?

Mr. MEAD. It was. That is where the testimony was brought out, at the hearing before the Commission last October. Mr. Leeds testified that they built these new refrigerator cars, went into California to get the business, and had to pay the same rebate that the Armour people had been paying to get the business.

The CHAIRMAN. What was done with the case by the Commission?

Mr. MEAD. The case has not been finished. It was reopened last week in Chicago. I attended that hearing last week.

The CHAIRMAN. Is that still pending before the Commission?

Mr. MEAD. Yes, sir.

The CHAIRMAN. What was the form of that rebate. How was it paid?

Mr. MEAD. Mr. Leeds testified that he sent a check to the shippers in California, and that he had to do it to get the business.

The CHAIRMAN. Sent a check to whom?

Mr. MEAD. To the shipper.

Senator DOLLIVER. Why did he not simply reduce his rates?

Mr. MEAD. I could not tell you that. I am simply telling about what was testified to at that hearing.

The CHAIRMAN. And you say that case is now pending before the Commission?

Mr. MEAD. Yes, sir.

The CHAIRMAN. I think possibly, out of respect to the Commission, perhaps it would be better to let the Commission get through with that case before we take any action about it. You are now stating about what one party said, and we do not know what the testimony was on the other side.

Mr. MEAD. I wanted to read their own testimony at this hearing. I have their testimony. It has all been made public.

The CHAIRMAN. The testimony has been printed, no doubt, but the Commission has not fully considered it yet.

Senator FORAKER. If practices of that kind are going on, I want to know about it, and if the law we have passed is not sufficient I think it should be amended.

Mr. MEAD. At the reopening of that case last Wednesday and Thursday it was testified that rebates are being paid now, and the man who made the rebates testified that he had made them, and he testified to this effect: That five days before the lieutenant-governor of California issued a statement that he had received no rebates this

young man made up his rebate statement and sent it to him. There is a young man who would probably give the committee more information regarding private car lines than any man in the country.

The CHAIRMAN. Who is that?

Mr. MEAD. His name is H. J. Streyckman.

Senator FORAKER. Is he the man who testified to having stolen the code and other documents? I would rather hear Mr. Leeds than Mr. Streyckman, for I do not think we need to resort to any testimony of such questionable character.

Mr. MEAD. It was startling testimony for us to hear regarding the price of ice. That hearing was held in Chicago for the purpose of getting definite information regarding the icing charges. It was shown that the contracts of Armour & Co. with the railroads showed that the cost of ice at Grand Rapids was $1.65 and $2 per ton. I want to state this: That the Michigan Central people, at the hearing in Chicago, made the statement that they were to withdraw from any contract, or had done so, since the Commission's finding in June, and this year their rate to Boston would be $25 a car, while the Pere Marquette road is to charge $45. I think the chairman was absent from the room when I made that statement. So that this condition exists in Grand Rapids at present: That if a man ships from Grand Rapids to Boston by the Michigan Central he pays $25, and if he ships by the Pere Marquette he has to pay $45.

The CHAIRMAN. For the same commodity?

Mr. MEAD. Exactly.

The CHAIRMAN. From the same point?

Mr. MEAD. From the same point. If it is on the Michigan Central, he can ship the same distance for $25; and if on the Pere Marquette, it is $45. The Michigan Central people withdrew and asked the Commission to let them out of the case, because they had complied with the order of the Commission, and the Pere Marquette stated that they would withdraw as soon as their contract had expired next November.

The CHAIRMAN. Proceed with your statement.

Mr. MEAD. At the present time we have no means of knowing, as I have stated, whether the charges that come to us in a freight bill are correct. They simply come to us in one lump sum. But in one instance, in Chicago, the Armour people have sued a receiver there for services performed by a railroad company in which a car came over a certain line of railroad, not an Armour car, but at the Armour rate; the receiver refused to pay the bill simply because the goods came to him in an Illinois Central car, but charged at the Armour rate. As I say, the Armour Company sued him, and within two weeks the Chicago and Eastern Illinois Railroad have sued a receiver for the Armour service. Frequently the Armour icing charge is more than the freight charge. In one of these cases at Chicago that was developed. We can not understand how a railroad company has the right to sue the receiver there for the service performed by Armour & Co. In one instance the railroad is suing for that work, and in the other Armour is suing for the work performed by the railroad. That is one thing we want straightened out, so as to have uniformity in regard to shipping perishable products.

I think, Mr. Chairman, that covers substantially my statement.

The CHAIRMAN. Let us go back to the question of rebates. As I understand, the Commission is still hearing testimony in that case?

Mr. MEAD. That case was reopened at Chicago and adjourned; but it is still open, and I understand that the grand jury are this week considering that case in Chicago.

The CHAIRMAN. Have you the testimony on both sides, or only on one side?

Mr. MEAD. I listened to all the testimony in Chicago, and I wanted to get a transcript to bring here.

The CHAIRMAN. I thought you had it in print.

Mr. MEAD. I have simply the newspaper reports of the hearing in Chicago. The stenographers of the Interstate Commerce Commission could furnish you that within a few days, and within a few days the whole transcript will be out.

The CHAIRMAN. We will ask for it for the committee.

Senator FORAKER. We asked Mr. Robbins about it, and he testified that this man's testimony had been given, but that he had not been allowed the opportunity to present any testimony against it.

The CHAIRMAN. I understand it now. Is not the law, as it stands, in regard to these abuses, discriminations, overcharges, and rebates, sufficient to correct them, in your judgment, and to cause the offenders to be punished?

Mr. MEAD. The Armour Car Lines people claim that they are not amenable to any law.

The CHAIRMAN. What do you say?

Mr. MEAD. I am not a lawyer, but I have my opinion about it. We feel that the railroads have been collecting illegal charges since the passage of the Elkins law. If I understand the force of the Elkins law, it is that the railroads must file with the Interstate Commerce Commission a published tariff charge, and that they can not collect beyond that. Now, they have been collecting something totally different from their filed published tariff charge.

The CHAIRMAN. That is punishable by the law.

Mr. MEAD. And they have been turning that money over to the Armour Car Lines. We hold that the money over and above that called for by the published tariff is illegal, and there is a trial to come off next month in regard to that matter.

The CHAIRMAN. I understood you to say that you objected to putting these car lines under the operations of the interstate-commerce law.

Mr. MEAD. Oh, no; we do not object to that. But we feel that there would be one difficulty about making the private car lines common carriers—that is, that it would then bring in two conflicting elements, two common carriers in the transaction of our business.

The CHAIRMAN. And therefore you object?

Mr. MEAD. No; we feel that if a law could be passed compelling railroads to furnish all the equipment and service, that would be a better way.

The CHAIRMAN. Would you abolish the private car system altogether?

Mr. MEAD. Oh, no, sir. I do not think the average man has any idea about this refrigerator car business and the way it is growing.

We simply want the railroad to furnish the service under one charge to us, and the railroad may get cars wherever it may see fit.

Senator CARMACK. You want to make the railroad responsible for furnishing all the facilities for that sort of shipments?

Mr. MEAD. Yes, sir.

Senator CARMACK. And it is no concern of yours where the railroad should get them?

Mr. MEAD. We do not care where they get them, whether from the car lines companies, connecting roads, manufacturing companies, or holding companies.

Senator KEAN. You hold them responsible now for the whole thing?

Mr. MEAD. I think the railroads are responsible.

Senator KEAN. You do hold them responsible for the whole thing?

Mr. MEAD. We do not recognize Armour at all; we only go to the railroad company. We claim that for all essential purposes, when they lease a car to Armour, that is part of their equipment just as much as a warm car to ride in is a necessary equipment for passengers.

The CHAIRMAN. What remedy do you suggest to correct these evils and abuses?

Mr. MEAD. The car lines committee of the National League of Commission Men desire this: That the railroad companies should be obliged to furnish all of the equipment that is necessary, and perform all the service that is necessary, to safely transport the commodities we tender them.

The CHAIRMAN. That is first; what else?

Mr. MEAD. And then, of course, their refrigerator-car tariffs should be published and filed with the Interstate Commerce Commission, and then we could get at the Armour Car Lines' charges. To-day we can not. They say they are not amenable to the interstate-commerce law. We can not get at them.

The CHAIRMAN. You want their tariffs filed the same as railroad tariffs?

Mr. MEAD. Yes, sir. We contend that they are not in the same position as the man who furnishes coal; they take part in interstate-commerce business.

Senator CULLOM. Are you receiving private cars now loaded with fruits or meats?

Senator CULLOM. From Chicago?

Mr. MEAD. No, sir.

Senator CULLOM. From where?

Mr. MEAD. They are coming from North Carolina mostly at the present time.

Senator CULLOM. In refrigerator cars?

Mr. MEAD. Do you ask me personally?

Senator CULLOM. Yes.

Mr. MEAD. I am not receiving at the present time. I handled last week probably some cars for the railroad company.

Senator CULLOM. Have you received refrigerator cars from Armour & Co.?

Mr. MEAD. Oh, yes; last year; loaded with berries and canteloupes

Senator CULLOM. Did you receive any rebate or anything of the sort?

Mr. MEAD. We did not know these rebates were being paid until Mr. Leeds testified in Chicago. It was a surprise to us.

Senator CULLOM. If you had known, you would have been after them, I suppose?

Mr. MEAD. I do not know about that.

Senator CULLOM. As a matter of fact, you have never received rebates at all?

Mr. MEAD. No, sir.

Senator KEAN. With all these exorbitant charges what is the price of berries to the consumer? Are they very high or very low?

Mr. MEAD. What do you mean? The relation refrigerator charges bear to the price?

Senator KEAN. Yes; the price to the consumer.

Mr. MEAD. The price in Boston this year has been from 2 cents a quart up to 15, simply because the berries have been almost unfit to ship. They have lain on the station platforms because there were no cars furnished for about a week, and when the refrigerator cars did come they were seized and loaded immediately without cooling off. A car ought to be iced twelve hours before loading, but in their anxiety to get cars they loaded these cars immediately, and loaded them beyond their capacity to carry, and so the berries came to destination in bad order. That was not the fault of the car itself; it was the fault of the shippers, and because of the fact that they could not get equipment.

Senator KEAN. You made a claim for that?

Mr. MEAD. I do not know whether they could collect any claim on these cars that came through in bad order. There is no question about their being able to collect for the crates of berries that were thrown away.

Senator KEAN. You complain of exorbitant charges for the transportation; did that affect the price of the goods to the public?

Mr. MEAD. The consumer has to bear the burden in the end. The consumer pays the increased cost every time.

Senator CULLOM. You know, do you not, that Armour & Co. have printed tariffs?

Mr. MEAD. I know they claim to have. I have never seen them.

Senator CULLOM. Did you ever try to get one and fail?

Mr. MEAD. No; but I understand it is very difficult to get them. That is the testimony of the commission men. I do not think they are distributed very freely.

Senator CULLOM. My understanding is that, upon application, anybody can get one.

Mr. MEAD. Possibly so.

Senator CULLOM. But you neither have received any rebates yourself nor do you know of anybody else who has received a rebate?

Mr. MEAD. From the railroads or the car lines?

Senator CULLOM. From the car lines.

Mr. MEAD. No, sir; the first news I had of rebates was when Mr. Leeds testified that $25 was paid for cars to Chicago and $35 for cars destined for New York or Boston.

Senator CULLOM. Generally speaking, you are not satisfied with the conduct of the private car business?

Mr. MEAD. No.

Senator CULLOM. And you want some legislation that would place them under control of the Interstate Commerce Commission?

Mr. MEAD. Yes, sir.

Senator CULLOM. Some control or regulation?

Mr. MEAD. Yes, sir; because they evidently had in mind not only the price to the producer, but also to the consumer in distributing the goods through their different houses.

Senator FORAKER. You were talking about berries being dumped in North Carolina. In that connection I asked you what the cause of that was, as stated by Mr. Robbins, and you did not seem able to recall it. I knew he had stated a reason. Now, I find at page 58 of the testimony taken on the twenty-third day of these hearings that Mr. Robbins testified on this subject on the first day that he appeared.

Mr. MEAD. I was not here the first day he testified.

Senator FORAKER. He testifies, in the first place, that last year the average number of cars of berries per day from North Carolina was 100, and then says:

During the present month this North Carolina berry business jumped to the unprecedented, unexpected, and enormous proportions of 200 cars daily, and a delay to empties in New York Harbor, due to fog and poor handling of empties elsewhere, chargeable to blockades, caused a shortage of about half of one day's car supply over a period of several days, making it necessary to dump a large quantity of the berries (which were delayed less than a day), and for which we are now adjusting with shippers claims that will amount to about $75,000, or more than our profits on the business for a long term of years.

I knew he had made some such statement.

Mr. MEAD. I did not hear that statement.

Senator FORAKER. Do you know whether it is true that the berry business did jump up to these unprecedented and unforeseen figures—almost double?

Mr. MEAD. No, sir; I simply know that the shippers there claim that they asked Armour & Co. to have a thousand cars in their country ready for this business, and instead of that they got 600. I was in New York a week ago Saturday, and in conversation heard it stated that Armour said that the Pennsylvania was not giving back empty cars. So I went to the long-distance telephone and called up the Pennsylvania and asked if that was true. They stated that it was not true; that their empty-car movement was never better than this year. I have not been able to conceive how that condition was brought about.

Senator FORAKER. I have seen it stated in the newspapers that there is such a blockade of cars on the Pennsylvania road in Jersey City that it has been very difficult to satisfactorily handle freight during this season. I was thinking possibly that was a fact with which you might be familiar.

Mr. MEAD. We have not found that so in Boston.

Senator FORAKER. Mr. Robbins says, further, with respect to rebates, that they publish the rates they charge; that they never deviate from those charges, except in some instances in California, where, he says, they have to make special rates on account of special conditions they

have been confronted with there; that those changes in their published rates which they have in California are open to all shippers; that they have not discriminated between them at all, and that it is only differences in charges of that character that Streyckmans testified about before the Interstate Commerce Commission. It was with the view of identifying Streyckmans that I made the inquiry I did a while ago. Mr. Robbins says, further, referring to Streyckmans:

He openly admitted on the stand that while in the employ of the Armour Car Lines at Sacramento he stole records, letters, and books and sold the information to the managing editor of the San Francisco Examiner, and same was published in that paper last August. He further admitted that he was actuated in his appearance as a witness by revenge for fancied illtreatment.

Can you tell us whether or not that is true, as stated by Mr. Robbins?

Mr. MEAD. Senator, all I have to go by is the testimony I heard from this witness in Chicago.

Senator FORAKER. What I am asking is whether or not Mr. Streyckmans admitted that he stole these records?

Mr. MEAD. I think his testimony was to the effect that the code was given to him; that he went to work for Armour & Co. three or four years ago and got them in his possession at that time, and still carried them with him.

Senator FORAKER. Did he admit that he sold them to the San Francisco Examiner?

Mr. MEAD. No; he did not put it that way. He went to the proprietor of the Examiner there to try and secure passage for himself and wife to Chicago. He was stranded and without money, and money was furnished him, and in consideration of that he gave this story to the paper. Of course, I have no way of knowing the truth of the statements. He apparently told a very straight story. What his animus was I have no way of knowing.

Senator FORAKER. We ought to have some way of ascertaining how much credence we should give to that testimony, and it will enable us to know how much credence we should give if we could ascertain from you whether he admitted that he stole the papers and documents and sold them to a newspaper, and whether in so doing he was actuated by a spirit of revenge. I am only asking whether he admitted all that on the stand.

Mr. MEAD. I presume, in view of his testimony and the testimony of officials of the Armour Car Lines, they will be summoned to testify. Whether they will confirm his statement, I do not know.

Senator FORAKER. The question is, Did he admit these things?

Mr. MEAD. He had to admit part of them; the evidence was so clear that he could not help it. What his animus was, or how much truth there was in his story, I have no means of knowing.

Senator FORAKER. Did he admit that he stole the records, books, and letters, as well as the code?

Mr. MEAD. He did not want to admit it in those terms. Of course the Armour attorneys tried to get possession of the papers and code, and he testified that he made carbon copies of letters that he had written for them, and had them in his possession.

Senator FORAKER. And carried them away and gave them to another person for a consideration?

Mr. MEAD. I do not know about the consideration part. That I could not tell you.

Senator FORAKER. As I understand you, you are dissatisfied at this time with the present service of the private car lines and with their service heretofore. Your complaint is, in the first place, that they charge excessive rates, and, secondly, that their charges are discriminatory in character.

Mr. MEAD. Yes, sir.

Senator FORAKER. And you, with the association you represent, will be satisfied, you think, with anything that remedies that evil?

Mr. MEAD. Yes, sir.

Senator FORAKER. These abuses?

Mr. MEAD. But probably three-fourths of the fruit handled heretofore in these refrigerator cars—the Armour Car Lines—has been shipped out under exclusive contract, so that we are the people that pay these profits.

Senator FORAKER. I think the committee only wants to know what the fact is, and they want the benefit of your judgment as to what we should do. If these abuses and evils exist, we are entitled to a remedy, and we want to find the correct remedy.

Mr. MEAD. I have given it as well as I can. We feel that to put them under the interstate-commerce law and make them common carriers would inject into the situation——

Senator FORAKER. I do not know what conclusion will be reached by the committee, but the consideration of the subject will not be overlooked. I am sure the committee desires that some adequate remedy be afforded.

The CHAIRMAN. Who is that Mr. Streyckmans, of whom you spoke? Is he here?

Mr. MEAD. No, sir; he is employed at the Sherman House in Chicago.

The CHAIRMAN. What is his business?

Mr. MEAD. I think he said he was private secretary to the proprietor of the Sherman House.

Senator CULLOM. Did he state the amount of money or what consideration he got from the San Francisco Examiner?

Mr. MEAD. No; he did not state any consideration. If I remember his testimony correctly, it was to the effect that he wanted transportation for himself and wife to Chicago; that the proprietor of the Examiner furnished him that transportation, and that in consideration of that he gave his story. What else he received I have not the slightest idea.

Senator CULLOM. I should not want to depend entirely on his testimony in the case.

Senator FORAKER. Whatever his testimony may have been, we will have the benefit of it when it is furnished.

Senator KEAN. What number of fruit and berry growers—I mean farmers, actual producers—are in sympathy with your league?

Mr. MEAD. We have the large majority of them. We have a great many letters from shippers.

Senator KEAN. I do not mean shippers; I mean actual producers—the farmers of the country, the people who produce the fruit.

Mr. MEAD. From the letters we get from them and from what we hear, we feel that a great majority of them are not only in sympathy

with us but want to help us. Of course they are situated so that they can not do very much.

Senator KEAN. You have had a convention in Chicago, I understand?

Mr. MEAD. Yes, sir.

Senator KEAN. And in New York?

Mr. MEAD. Yes, sir.

Senator KEAN. What other cities?

Mr. MEAD. St. Louis.

Senator KEAN. What others?

Mr. MEAD. Louisville.

Senator KEAN. You go to the centers?

Mr. MEAD. Oh, yes. We have been to all the centers. We hold conventions in the cities.

Senator KEAN. But you do not go around among the farmers and producers?

Mr. MEAD. I think in my private business through Delaware and Maryland—that is a section not alluded to here—Armour & Co. carry a good deal of fruit out of Maryland and Virginia; all those growers are in hearty sympathy with us.

Senator KEAN. Do you know of any growers who are dissatisfied?

Mr. MEAD. Yes, sir. We come in contact with a great many who are dissatisfied with the conditions.

Senator KEAN. Name the growers.

Mr. MEAD. I did not bring them here, but I have letters relative to this North Carolina situation from shippers who are dissatisfied, and they say the service is the worst they ever saw. I have letters from Georgia, and when hearings were held here and in Chicago, witnesses were brought by the Armour Car Lines, and their expenses, a per diem, and hotel bills were paid to them, according to the testimony of the Armour people. They were brought to testify in regard to the service of the Armour Car Lines.

Senator KEAN. To testify in what way?

Mr. MEAD. They were brought in to testify that they did have good service. But it is not the service we complain of so much as the discriminations and abuses.

Senator CULLOM. The service is all right now?

Mr. MEAD. We are not complaining of the service.

Senator KEAN. The growers would not be apt to complain against the rates, would they?

Mr. MEAD. I do not know why they should not.

Senater KEAN. Have they complained?

Mr. MEAD. Certainly they have complained.

Senator FORAKER. That they have to pay higher rates?

Mr. MEAD. It comes out of them in the end. If the Armour lines charge $100 where it should be $25, that $75 comes out of the farmer.

Senator KEAN. What part do the league play in this matter?

Mr. MEAD. A large percentage of the business that is done is conducted by the members of the league, who actually own these products, and not the shippers. The evident desire of the Armour Car Lines is to discourage the shipping men. I think I am safe in saying that over one-half of the berries coming out of North Carolina into our Boston market are bought by commission men, who own these

products. I think that it is also true in every part of the country. The members of the National League of Commission Men handle about two-thirds of the fruits and produce shipped under exclusive contract; so I think they have a very vital interest in this proposition.

Senator CARMACK. Your attention was called a while ago to the testimony of Mr. Robbins explaining the cause of the failure to furnish cars for berry shipment in North Carolina, on account of the unexpectedly large demand for shipment—about twice as large as it was last year, you say. Is it not necessary to know in advance the condition of the berry crop, and to provide for it, in a particular locality?

Mr. MEAD. That information is given them through the secretary of the East Carolina Shippers' Association. I have a letter from him here. I do not wish to put it in as evidence. It is addressed to a private party in Boston, and I do not care to expose their business to the Armour Car Lines. But that is all done through an association—the Carolina Truckers' Association, I think it is. They make up an estimate for the entire section and for the number of cars probably to be required, and the trade papers state that they asked the Armour Car Lines for 1,000 cars this year and they only got 600. I would like to put in as evidence here this statement regarding the situation in North Carolina.

The CHAIRMAN. What is it from?

Mr. MEAD. From the Fruitman's Guide, which is the official organ of the National League of Commission Merchants.

The CHAIRMAN. What is the statement?

Mr. MEAD. The statement relates to the lack of cars in North Carolina.

DUMPING THE BERRIES INTO THE RIVER AT CHADBOURN.

Under date of Chadbourn, N. C., March 7, a correspondent writes:

"There has never been anything in the history of this State that compares with the railroad blockade here. More than $200,000 worth of strawberries have rotted at the depot here since Monday morning. The railroad company is hauling carload after carload of spoiled berries to the river and dumping them like so much garbage.

"The loss to the truck growers of this immediate section, according to figures said to be reliable, will be at least $600,000. The Fruit Growers' Express Company, it is alleged, has failed to supply the refrigerator cars. The farmers are picking their berries as rapidly as they can and turning them over to the station agent here, but the situation is growing worse. The express company is held responsible, and claims for $200,000 damages have already been filed, with more yet to come. More than a hundred representatives of the country's commission houses are here willing to pay from $2 to $3 a crate for the berries if they could only ship them. Ten thousand hands are at work picking the berries."

Senator CULLOM. Who is responsible for all that damage of $600,000?

Mr. MEAD. Why, I presume in the final analysis the Armour Car Lines will pay the bills, but the shippers look to the railroads; they do not know Armour in the proposition at all.

Senator CULLOM. Where is that paper printed, from which you read, and who owns it?

Mr. MEAD. This paper is printed in New York, but I would also introduce a paper from the Fruit Growers' Association of North Car-

olina, their official paper, and I will put that in as coming from the fruit growers, if you think the other is biased.

Senator CULLOM. How long is it?

Mr. MEAD. This is the Carolina Fruit and Packers' Journal; the statement is not very long.

Senator CULLOM. Who owns that paper that you were reading from?

Mr. MEAD. That paper is owned in New York and is known as the official organ of the National League of Commission Merchants. I have other papers here which are in no way connected with our league which gives the same information, and here is this paper from the fruit growers, containing their account of it.

Senator CULLOM. Where?

Mr. MEAD. In North Carolina.

Senator KEAN. Who shipped the berries?

Mr. MEAD. These berries that were lost?

Senator KEAN. Yes.

Mr. MEAD. They picked out a good many and dumped them; and a good many farmers did not pick the berries and bring them in.

Senator KEAN. Yesterday we received testimony from somebody who stated that Armour & Co. were paying some $75,000 or more right in the same neighborhood in North Carolina. Is this the same thing?

Mr. MEAD. I think Mr. Robbins testified that they would be obliged to pay $75,000 for the shortage of cars.

Senator KEAN. Is not that nearer the amount than $600,000? Would not that be about the amount exclusive of the freight charges and the charges for icing and everything else?

Mr. MEAD. But, Senator, they must be paid for the worth of the berries. It is not for the freight charges they are being paid. The Armour Car Lines have a contract with the Atlantic Coast Line to furnish all equipment, whatever equipment is necessary.

Senator KEAN. From that statement it shows that the Pennsylvania people were truthful in their answer to you when they said that they were delivering their empty cars.

Mr. MEAD. I am simply giving their testimony to me. Their record of empty cars was good. This is the official organ of the berry shippers of North Carolina. The article to which I refer is as follows:

A PIONEER TRUCKER ON THE CAR SHORTAGE.

WALLACE, N. C., *May 5, 1905.*

EDITOR CAROLINA FRUIT AND TRUCKERS' JOURNAL: During my thirty-five years' experience in the strawberry business in this section I have never seen anything to compare with the disastrous results of the present season. In fact, it looks now like this, the most valuable strawberry crop North Carolina has ever produced, will be lost on account of poor transportation facilities. Our association has done all it could to keep the transportation people posted as to existing conditions, and told them it would take 2,500 refrigerator cars to move the crop; yet the supply of cars gave out before we had been shipping ten days. Thousands of crates of berries have rotted at the railroad stations for want of cars, and many of our growers are ruined unless the transportation people stand the loss, as they should do.

The situation is terrible. We have had no refrigerator cars left at this station to be loaded in five days. What we had came by in the "pick-up" train,

and with instructions to load for New York only. They packed them, mostly without slats, seven crates wide and four high, running about 450 crates to the car, and are being delivered one to three days late. The markets are taking good berries at good prices. The "pick-up" berries are selling for nothing to 8 cents, as to condition.

Growers are demoralized and about frantic. Yesterday there was one empty car on the "pick up," which was given to one party who had bill of lading for 300 crates. As soon as the car stopped, other growers began to carry their berries into it, and for some time it looked like we would have a general hand-to-hand battle, while our clever agent, who has been worried until he looks like he is just out of a spell of fever, was powerless. "Forbearance has ceased to be a virtue" here, and we must have more cars or a heavy police force, for our boys want to fight.

The "pick-up" train as now managed will not do. You can not haul heavy loads of guano and strawberries successfully on the same train. One came by here so heavily loaded with guano it had to be cut in two, and took one part to Teacheys, and engine came back after the remainder. I don't know how long it takes to get to New York that way.

The railroad people make a big difference between guano and strawberries when they make up the tariff, but when they make up their trains they all go together. Of course railroad people claim that freight must be higher on berries, as they are perishable. This is all right if they bear this in mind in their movement. The berries that are being packed in the "pick-up" cars, 450 crates to the car, had better be dumped into the creek. Three box cars loaded with berries left here yesterday, which berries had been picked and lying at the station since Monday. Some of the crates were leaking when they were loaded, but they got about 500 in a car, and they will be in bad shape when they are unloaded. It is to be hoped they will not be offered for sale.

Well, the season will soon be over now and will go down in history as the worst in the management of the transportation of our berry crop.

Yours, very truly,

J. S. WESTBROOK.

The CHAIRMAN. This action at law against the railroads or the Armour Car Line Company for not supplying cars arises out of some contract?

Mr. MEAD. The Armour Car Line people have a contract with the Atlantic Coast Line to furnish all of the equipment necessary. No other car can be put in there than an Armour car, and they agree to furnish all equipments necessary to move this strawberry crop. How they have done it you can see by that statement.

The CHAIRMAN. That is a contract between the railroad and the Armour people?

Mr. MEAD. Yes.

The CHAIRMAN. And the shipper goes to the railroad for redress, and the railroad then seeks redress from the Armour people.

Mr. MEAD. Yes; the shipper knows only the railroad.

The CHAIRMAN. You suggest here that private car companies be obliged by law to furnish cars to the fruit shippers?

Mr. MEAD. As common carriers, we feel they ought to be obliged to furnish any kind of equipment that is needed.

The CHAIRMAN. And all that is needed?

Mr. MEAD. Yes.

The CHAIRMAN. Would you apply that to coal and iron also?

Mr. MEAD. I think that does apply to coal and iron now, does it not? As common carriers, are they not obliged to furnish all the facilities that are needed?

The CHAIRMAN. The railroads do not always do it.

Mr. MEAD. Well, I do not know as to that. Of course the fruit business is somewhat different from coal and iron. Fruits have to

be moved within a limited time, and of course you understand that fruit is moved under a high rate, and we pay for a special service for moving the fruits of this country, and we pay high rates.

Senator KEAN. I think after Mr. Mead leaves the witness stand if he will figure out this statement of $600,000 he will find that it includes the freight and other charges.

Mr. MEAD. I am only reading the statement that came from those people.

Senator FORAKER. Those figures may be too large, but the point is there.

Mr. MEAD. My own private opinion is that the loss will be at least half a million of dollars. Then there is a consequential damage that is not estimated in here, which the Armour people will never be called upon to pay.

Senator KEAN. You say these shippers buy the fruits at the stations. How much do they pay a box for them ?

Mr. MEAD. Oh, that varies. You mean the commission men?

Senator KEAN. Yes.

Mr. MEAD. That varies from day to day.

Senator KEAN. Do they buy them on a fixed price or on a scale?

Mr. MEAD. The prices in the different markets govern the price they pay.

Senator KEAN. You testified before that they went around the country and bought up all these things before, and took a whole district and bought it up.

Mr. MEAD. They buy at the depot when the stuff is brought in by the grower. They do not buy crops, except the apple crops. They buy the apples in the orchards. They come to the depot and buy the berries when they are brought in.

Senator KEAN. And they buy the peach crop?

Mr. MEAD. Yes; and buy them in that way when they are brought to the stations.

Senator KEAN. And the strawberry crops?

Mr. MEAD. Yes; they buy them when they are brought into the depot.

Senator KEAN. And the tomato crops?

Mr. MEAD. Yes; they are bought in the same way, very largely, and they are the people these abuses hit more than they do the growers.

The CHAIRMAN. You suggest that the carriers be required to furnish equipment enough to move the fruit crop. Would not that apply to all other commodities? Should not all of the shippers be entitled to have the right to have cars?

Mr. MEAD. Yes; but we say that because this is directly connected with the car lines that we are speaking of. This fruit requires a special service. It requires refrigeration, but of course we think it ought to apply to all commodities.

The CHAIRMAN. A coal miner and an iron producer and a grain merchant has the same right to have his products removed to market under the law of common carriers, and to ask that the railroad supply him with cars the same as any other shipper.

Mr. MEAD. Yes.

The CHAIRMAN. If you can amend the law so as to compel the great

trunk lines to furnish cars to shippers, it would be some progress made.

Mr. MEAD. We did not intend to come here and ask for special legislation, but the fruit crop has to be moved rapidly.

The CHAIRMAN. You are excused.

STATEMENT OF MR. O. O. TOLERTON.

Senator KEAN. Please state your name and residence.

Mr. TOLERTON. My name is O. O. Tolerton; Sioux City, Iowa.

Senator KEAN. What is your business?

Mr. TOLERTON. Wholesale grocery business.

Senator KEAN. Kindly state your business and the extent of it.

Mr. TOLERTON. I have been quite interested in this investigation. I want to say that the rates we are now having are stable and satisfactory. I have been in the business for about thirty years, or nearly so, and during that thirty years' time we have had unstable rates; we could not count on any rate lasting us very long at a time. That condition lasted until the time the Elkins law went into effect. After that we have had no rebates or allowances of any kind that I know of, and I am rather in a position where I think I would know something about it, because I am one of the heavy shippers of Iowa.

Senator KEAN. What is the extent of your business, stated in tonnage or in dollars and cents?

Mr. TOLERTON. I would rather put it in tonnage. I presume that would naturally be in the neighborhood of 1,500 to 1,600 cars per year.

Senator KEAN. Of what?

Mr. TOLERTON. All kinds of goods.

Senator KEAN. Groceries?

Mr. TOLERTON. Various lines that go with groceries, such as wooden ware, which is kindred goods with groceries.

Senator KEAN. You are one of the largest business men in Iowa?

Mr. TOLERTON. Among them; yes, sir.

Senator KEAN. You have no complaint to make with reference to the present condition of the rate question?

Mr. TOLERTON. None whatever. The rates are more satisfactory now than they have ever been in previous history. What we would like is to be let alone. Of course, I speak for myself.

Senator KEAN. You do not think your business would be benefited by giving to the Interstate Commerce Commission the power to fix rates?

Mr. TOLERTON. No, sir; I do not. I think it would be injurious to us.

Senator KEAN. You think the present conditions of the country are satisfactory?

Mr. TOLERTON. They are with us.

Senator KEAN. Do you know of any rebates?

Mr. TOLERTON. No, sir.

Senator KEAN. Are the rates fair and reasonable?

Mr. TOLERTON. They are with us; yes, sir.

Senator KEAN. You have no complaint to make?

Mr. TOLERTON. None whatever on my part. Outside of that I do not know.

Senator KEAN. Do you hear of any complaints?

Mr. TOLERTON. I do not hear of any.

Senator KEAN. You are a business man and meet a great many people. Do people seem to complain, in your part of the country, of the existing traffic rates?

Mr. TOLERTON. I have heard of none.

Senator KEAN. Have you anything further to say?

Mr. TOLERTON. I have nothing further to say.

Senator KEAN. We are much obliged to you.

STATEMENTS FROM PHILADELPHIA BOARD OF TRADE, THE E. R. WAGNER MANUFACTURING COMPANY, OF NORTH MILWAUKEE, WIS., AND THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS ON THE CHICAGO AND LAKE ERIE RAILWAY, ETC.

The CHAIRMAN. I would like to call the attention of the committee to the fact that I have before me three statements, which have been submitted for consideration. There is one statement from the Philadelphia Board of Trade, under date of May 15, 1905, being extracts from the minutes of a meeting of that body. I have had the papers and have glanced over them, and think it is a very fair statement to go into the printed hearings.

There is a further statement, which bears the seal of the Huntingdon Division, No. 221, of the Brotherhood of Locomotive Engineers, and which is dated at Huntingdon, Ind., May 7, 1905. It is signed by Mr. John Wonderly, chief engineer. I have here, also, another statement, from North Milwaukee, Wis., under date May 15, 1905, directed to the committee, and which discusses the question from the standpoint of certain power being conferred upon the Interstate Commerce Commission. As I say, I have looked into these three statements and think they should be printed. If there is no objection, they will be printed in the hearings.

There was no objection.

The papers referred to by the chairman are as follows:

PHILADELPHIA BOARD OF TRADE,
Philadelphia, May 16, 1905.

Hon. STEPHEN B. ELKINS,
Chairman Committee on Interstate Commerce, U. S. Senate.

SIR: Under the instructions of a resolution adopted at the stated meeting of the Philadelphia Board of Trade, held yesterday, I inclose you herewith certified copy of a report of its committee on inland transportation, which was adopted by a unanimous vote.

The report expresses the views of the board upon the question of the proposed amendment of the interstate-commerce law.

Yours, truly,

W. R. TUCKER, *Secretary.*

[Extract from the minutes of a meeting of the Philadelphia Board of Trade, held May 15, 1905.]

The following report of the committee on inland transportation was presented, read, and, on motion, adopted:

Your committee on inland transportation, in obedience to the resolution adopted by the council of the board of trade on the 24th of April, respectfully reports:

That it has taken into consideration the subject of the proper limits of governmental regulation of railroads doing an interstate business.

The resolutions heretofore adopted by the Philadelphia Board of Trade show that the board has consistently advocated such action, governmental and corporate, as will best secure the effectual correction of any abuses in railroad methods or operations that may, upon due inquiry, be found to exist.

The possible abuses in railroad methods as affecting the transportation of commodities are, first, undue and unreasonable discriminations and preferences, and, second, unreasonably high rates of transportation.

Much of the recent popular discussion as to railroad regulation has confused these two subjects, which require, and should receive, separate and independent consideration.

I. Discriminations.

There are fair and reasonable discriminations operating in long-distance traffic and which must continue to exist, or otherwise the farmer, the miner, the manufacturer, and the merchant would be limited to the markets of their own neighborhoods.

There are fair and reasonable discriminations between localities which are in some cases recognized by established differentials and which ought to continue to exist.

There have been in the past personal discriminations in preferences granted to a few shippers, in some cases from corrupt practices, but in other cases from unrestrained competition in the effort to secure the traffic of a particular customer.

The Philadelphia Board of Trade has consistently advocated the enactment of legislation permitting railroads to enter, not into secret agreements for the division of traffic, but into agreements to be filed with the Interstate Commerce Commission and to be subject to the corrective power of the courts. If such legislation were enacted, there would be an end of that discrimination which results from unrestrained competitive efforts to secure the traffic of desirable customers.

The interstate-commerce legislation now in force prohibits undue and unreasonable discrimination in whatever way effected, whether by agreements with particular customers or by unreasonable compensation for the use of private cars, or by unreasonable pro rata allowances for terminal railroads, or by any other means whatever, for the offense is in the end, and not in the means. No further legislation could increase the prohibitory operation of the law. All that is needed is a fearless enforcement of existing law, and for that the Interstate Commerce Commission has ample power, not only under the original interstate-commerce act, but also under the Elkins Act.

II. Reasonable Rates.

It is to the interest of manufacturers and merchants that railway rates of freight should be reasonable, which means that they should amount to, and not exceed, a just compensation for the service rendered by the railroad in the transportation of the particular article for the stipulated distance, and under the actual conditions of its movement.

That reasonable compensation should not only meet the actual cost of the carriage of the goods, but should also bear its proper proportion of the railroad's necessary disbursements for such improvements in the line and such increase in equipment as will enable the road to move traffic with facility.

From the point of view of the customer the cheapness of the rate is not the only factor, for adequate service is as important as cheapness of transportation. If a railroad by reason of its low rates and small profits can not have the means to provide facilities in advance of its immediate necessities, the customers lose more than they gain from the lowness of the rate.

III. The Esch-Townsend Bill.

Bearing in mind the action heretofore taken by the board of trade, your committee has carefully considered the Esch-Townsend bill, which has been recently passed by the House of Representatives, and which has been referred in the Senate to the Committee on Commerce, which is now giving hearings upon it. That bill enlarges the number of the members of the Interstate Commerce Commission to seven, and increases their salaries to $10,000 each; creates a "court of transportation" to sit in Washington or elsewhere when it so determines, whose process is to run throughout the United States, and which shall be constituted of circuit judges to be designated by the President, and to receive the ordinary compensation and allowances of circuit judges. That court is to have exclusive jurisdiction of all proceedings to enforce or restrain the orders of the Commission. The acts and findings of the Commission are to be prima facie evidence in the court, and only after discovered evidence is, in addition to these findings, to be admissible. Power is given to the Commission upon complaint by any person, interested or not in the subject-matter, to find any existing single or joint rate, or regulation, or practice, affecting transportation to be unreasonable or unjustly discriminating, and to prescribe the rate to be charged and the regulation or practice to be imposed or followed in future. The order of the Commission is to become operative thirty days after notice to the person or persons directly affected thereby, but to be subject to review in the court of transportation by a proceeding taken within sixty days, and subject to appeal to the Supreme Court, where the construction or application of the Constitution of the United States, or the constitutionality of a law of the United States is drawn in question.

THE OBJECTIONS TO THE ESCH-TOWNSEND BILL.

Assuming, though it admits of grave doubt, that Congress has the power, under the Constitution, to delegate to any administrative bureau the essentially legislative power of determining what rates in future shall conclusively be held to be reasonable, there are nevertheless certain practical objections to vesting any such power in the Commission.

1. As the Commission may act upon a complaint by any one, whether or not affected by the rate complained of, and as a change in any one rate necessarily affects multitudes of other rates, the power which the bill would, if it became law, vest in the Commission, is a general rate-making power for the whole country.

2. The reports of the Commission and the records of the courts show that complaints as to unreasonable rates have been infinitesimal in number.

3. The exercise of the power to fix rates in future could not possibly diminish unreasonable discriminations for a rate fixed by governmental authority can as readily be lowered for the benefit of a favored shipper or locality as a rate fixed by a railroad.

4. The action of the Commission in lowering rates would be final and unreviewable so long as the rate prescribed, however unreasonably low, and however discriminative as between different sections of the country, would yet fall short of successful confiscation for the reason that the court of transportation and the Supreme Court of the United States can not, under the Constitution, be vested with a power of reviewing the action of any administrative bureau.

5. American railroads, while paying higher wages to labor and larger prices for materials, nevertheless charge lower rates for carrying goods than those of any other country. This result has been brought about by reason of the intelligent appreciation by railroad managers of the fact that it is more profitable to move a large volume of business at low rates than a small volume of business at high rates. If the power be given to the Commission to lower rates in their unrestrained discretion, railroad managers will hesitate to reduce any rates, in the fear that the Commission may so reduce other rates as to deprive the railroads of all profits.

6. The power to find unreasonable or unjustly discriminative any regulation or practice affecting transportation, and to prescribe the regulation or practice to be imposed or followed in future, will authorize the Commission to operate all the railroads in the United States.

7. The power proposed to be vested in the Commission will necessarily lead to the ultimate adoption of a fixed rate per mile per ton, which, when put into practice, will limit manufacturers and merchants to the markets of their own localities.

8. It will be impossible for the Commission to exercise a general rate-making power over the whole country without creating sectional prejudices and fostering sectional animosities, and thereby bringing the administration of government into discredit.

A general and compulsory lowering of railway rates will necessarily be followed by discharges of laborers, reductions in wages, retrenchments in railway purchases, and by a consequent diminution of the purchasing power of the people and a depression in trade.

THE NEEDED REMEDY.

That which the country needs is a more speedy and more effectual correction of any abuses in railroad methods or operation that may, upon due inquiry, be found to exist. This desirable result can, in the judgment of your committee, be best obtained by legislation:

First. Taking from the Commission every judicial and legislative function and charging the Commission with the duty of inquiring as a prosecuting body into any cases of discriminations or unreasonable rates that may be brought to their attention, and of proceeding in the courts of appropriate jurisdiction to enjoin and to punish any unlawful action upon the part of the railroads; and

Second. By giving precedence in the courts of the United States to proceedings brought to punish, enjoin, or obtain reparation for any unlawful action upon the part of the railroads.

Your committee recommends that this report be adopted as the action of the board of trade, and that copies thereof be sent to the Hon. Stephen B. Elkins, chairman of the Committee on Interstate Commerce, Senate of the United States, and also to the several trade organizations with whom your board is in the habit of corresponding.

True copy:

[SEAL.] JOEL COOK, *President.*

Attest:

W. R. TUCKER, *Secretary.*

THE LUMBERMEN'S EXCHANGE
OF THE CITY OF PHILADELPHIA,
Philadelphia, May 12, 1905.

Hon. S. B. ELKINS,
Chairman Senate Committee on Interstate Commerce,
Washington, D. C.

DEAR SIR: The Lumbermen's Exchange of the city of Philadelphia is strongly of the opinion that the powers of the Interstate Commerce Commission should be so amplified as to enable them to enforce their decisions, and this exchange respectfully requests the Interstate Commerce Committee of the Senate to so recommend in their forthcoming report.

Very respectfully, B. FRANKLIN BETTS,
Chairman Committee on Legislation.

Attest:

EDWIN B. MALONE, *President.*
JOHN H. LANK, *Secretary.*

HUNTINGTON, IND., *May 7, 1905.*

Hon. STEPHEN B. ELKINS,
Chairman Interstate Commerce Committee:

At a regular meeting of Division 221, B. of L. E., held May 7, 1905, the following resolution was passed:

Whereas the Brotherhood of Locomotive Engineers on the Chicago and Erie is vitally interested in the general prosperity and upbuilding of the Erie Railroad; and

Whereas the welfare of the entire Erie Railroad, and particularly

railroad employees, is affected by rates of transportation, and the future growth and development of business interests depends largely upon the system of rate making by carriers, by which it enables the jobbers and manufacturers along the Erie Railroad to hold trade other than that purely local to their doors; and

Whereas the carriers have in the past diligently worked and assisted the manufacturers and producers, wholesalers and jobbers, to continue and expand their trade by reason of the system of rates adopted by the railroads; and

Whereas the carriers are better equipped for handling so complex a question as the making of rates for transportation of passengers or of freight, those handling rate matters for the various lines being experts who have made a life study of conditions and necessities for rates necessary to develop business in all lines; and

Whereas if a commission was appointed to handle rate making, no matter how intelligent they may be, they of necessity would not be sufficiently equipped, as no commission could handle the rate making of all the railroads in the United States without doing some localities and some industries injustice; and should it be attempted to establish rates on a mileage basis, or eliminate differentials which exist between terminal and intermediate points, it would have the effect of causing a panic in our commercial circles, as such a radical change would naturally be felt by the entire business and labor wage-earning community; and

Whereas we do not consider the Interstate Commerce Commission should be given the power of rate making, as we do not believe it would be to the advantage of anyone; but, on the other hand, would work to the disadvantage of the railroad wage-earners; therefore, be it

Resolved, That the Brotherhood of Locomotive Engineers of Huntington Division, No. 221, recommend that no legislation be adopted whereby the Interstate Commerce Commission would be given the arbitrary right to make freight and passenger rates, as we consider it extremely detrimental to the best commercial interests involved, believing that the Interstate Commerce Commission has now the authority to take up any matter that tends toward discrimination or any rates that appear excessive, which, if exercised, would meet requirements for which the body was originally organized.

[SEAL.]

JOHN WONDERLY,
Chief Engineer.

WM. MCCLURE,
First Assistant Engineer.

NORTH MILWAUKEE, WIS., *May 15, 1905.*

GENTLEMEN: We have been very much interested throughout the past year in the demand for effective national regulation of railroad rates, and note some of the testimony taken by your committee in the last few weeks.

As we have had some experience with railroad rates, we would like very much to submit to you a few instances in connection with same that bear on the investigation you are making.

We manufacture a line of hardware specialties, among which are springs and axles for children's vehicles. In this line we are pres-

tically the only manufacturers west of Ohio, and, while we sell our product in all parts of the country, our best selling territory should be in the surrounding States.

For a number of years we have been endeavoring to work up a business in St. Paul and Minneapolis, which would naturally be our best sales district, as we are much closer to it than any of our competitors, but have been handicapped to a great extent as the freight rate on the items mentioned above, from Milwaukee to the twin cities, is 40 cents per 100 pounds. Freight charges are quite a percentage of the value of these goods and for this reason a high freight practically wipes out our profit.

In comparison with the above rate of 40 cents per 100 pounds for a haul of 335 miles, we can ship the same goods to other cities at the rates named below.

Detroit, which is 369 miles from Milwaukee, takes the following rates per 100 pounds:

	Cents.
Springs	22
Axles	16½

Pittsburg, which is 550 miles from Milwaukee, takes the following rates per 100 pounds:

	Cents.
Springs	27
Axles	22

New York, which is 1,000 miles from Wilwaukee, takes the following rates per 100 pounds:

	Cents.
Springs	40
Axles	33

You will note from the above rates, quoted us by the railroad companies, that Detroit, which is a 10 per cent longer haul than Minneapolis, secures rates about half as high. Pittsburg, which is a 60 per cent longer haul than Minneapolis, has rates less than two-thirds of the latter. New York, which is three times as far, has the same rate on springs as Minneapolis and almost 20 per cent less on axles.

We realize that distance alone can not determine rates as the volume of traffic, etc., have some little bearing on the cost. At the same time there is heavy traffic between Milwaukee and Minneapolis and it doesn't seem to us that there is anything in the cost of carrying the goods to warrant any such difference in rates.

What is still worse for us, however, is the fact that our competitors farther east are situated much better in securing freight rates to Minneapolis than we are. We give you below the rates on these same articles from two of the most important cities manufacturing hardware specialties.

Toledo, Ohio, to Minneapolis, a distance of about 600 miles, has the following rates per 100 pounds:

	Cents.
Springs	42
Axles	37

Pittsburg, Pa., to Minneapolis, a distance of about 800 miles, has the following per 100 pounds:

	Cents.
Springs	48
Axles	42

You will note from these rates that a manufacturer at Pittsburg, where most of our raw material comes from, secures rates that are very little higher than ours and saves the entire freight on the raw material from Pittsburg to Milwaukee, which costs us 18½ cents per 100 pounds. From Toledo, where we have very strong competition, the rate on springs is 5 per cent higher than our rate, while on axles it is over 5 per cent lower, although it is about twice as far from the destination as Milwaukee.

About five years ago, when we first began doing business, we called the attention of the Chicago, Milwaukee and St. Paul Railway Company, on whose tracks we are located, to the injustice of this rate, and they fully agreed with us in our contention. At the same time they informed us they could do nothing for us individually, as they were members of the Western Traffic Association, and our only remedy lay with the western classification committee, if we could induce them to give us a lower classification on these goods.

We therefore presented a petition accordingly at the next meeting of the committee, but we were unsuccessful in securing any favorable action. During the past four years we have presented this petition to the same committee once or twice a year when they had their meetings, but have never been able to secure a reduction, nor have we ever had a reply from them stating wherein we were wrong in asking for it.

The fact is, we ship practically all our goods over the Chicago, Milwaukee and St. Paul Railway, and send very few shipments over the other railroads in the western association, so the others would hardly be interested in making any change in our favor. We are informed that to make a change in the classification requires the concurrence of the representative of every road, so you can realize the difficulty of securing any action. Besides this difficulty, their giving us a reduction might open up other freight rates, so that they are naturally inclined to leave the rates alone rather than begin making reductions.

Several months ago we took the matter up again with the Chicago, Milwaukee and St. Paul Railway through their head freight officials at Chicago, and, while they acknowledged frankly in their reply to us that the rates in question were entirely wrong in comparison with other points, they were unable individually to correct them. They also informed us in their reply that these rates from the East were made partly on account of water competition, which they are obliged to meet in some respects, besides the rates from Milwaukee to the Twin Cities affect their entire intermediate territory, which they do not wish to disturb. As a result, we must see business that naturally belongs to us go to competitors several hundred miles farther away from this district than we are or give up a large part of our profit to hold the trade.

Another experience of a very similar nature occurred to us about a year ago. We are making large quantities of rough, unfinished hardware which we have been shipping out to our customers for a number of years as "iron forgings," taking a fourth-class rate. Last year the inspectors raised all our shipments to "ferrules," taking a third-class rate, and making a difference of about 50 per cent in our freight rates. We took samples of these goods and submitted

them to the Chicago, Milwaukee and St. Paul officials here, also to the Milwaukee official of the railroad inspection bureau, and they both agreed with us in calling the goods "iron forgings," entitling them to the fourth-class rate. We then corresponded with the chairman of the official classification committee, who has control of the inspection, giving him data which showed that according to the value per pound, weight per cubic foot, and finish of the goods the fourth-class rate should apply. The railroads claim that these three items are what determine the classification of an article.

Our communication was not acted upon favorably, and as there was a meeting of the committee at Chicago, the writer went down there and saw Mr. Gill, the chairman, personally, but without doing any good. He remarked to me at the time that this difference in classification on that portion of our product would amount to only a few hundred dollars a year, and if I would spend the same time and energy in some other branch of our business it would bring better returns financially. In the light of our previous experience of four or five years in endeavoring to secure equitable rates, etc., his remark was certainly true, but is it not a sad commentary on the state of affairs in a country like ours that this should be the case?

Aside from the justice or injustice of our claim, is it not placing a tremendous power in the hands of one man, or let us say a committee of a dozen men, all paid and controlled by one of the interested parties—that is, the railroads—to determine absolutely whether any shipper or consumer shall pay a just rate or something far higher? Where is there a more powerful trust than this little committee which is accountable to no one but its masters, who are interested in securing high rates, and which controls this subject absolutely without appeal over the greater part of our country?

It has always seemed to us that there is a great deal of unnecessary complication in the present method of classifying freight, since in interstate commerce alone there are three classifications—the "official," covering the Eastern States; the "western," controlling this territory, and the "southern," which operates in the South—with perhaps more that we are not familiar with. On freight traveling through a number of States this causes no little complication, as an article which is third class in one classification may be fourth or fifth in the other. Such differences are unnecessary, and there seems to be no good reson why the same classification should not apply over the entire country on interstate traffic. As it is, it is almost a life study to keep track of these matters, and the railroad men themselves very frequently are unable to determine correct rates and classifications for that reason.

Another feature of railroad rates that appears to most of us as very unjust is the fact that they will make very low rates to some points where there is water competition, while other points at practically the same distance may take rates twice as high on account of the lack of water competition. Presumably the railroads do not make a profit of 50 or 100 per cent on their charges, so that the low rate must cause them a loss which they are obliged to offset or reimburse themselves for out of the high rate charged to the other point, which has not the advantage of the water competition, in that way putting it at a double disadvantage. If a certain point is able to

secure rates by water that are lower than the railroad company can afford to meet, why not let it have that advantage as far as water rates are concerned, but let it pay a fair rate on all-rail traffic, instead of throwing an additional burden on the noncompetitive points, which are already at a disadvantage.

There are frequently cases where the railroad companies make exceptionally low rates on account of some special influence or special competition, which must net them a loss instead of a profit, and, as every railroad company figures that it must have a certain return on its capital, they can not do otherwise than offset this loss by additional charges to those points or shippers who are helpless in resisting them.

We note from newspaper reports that you have had quite a number of manufacturers appear before your committee and argue in favor of the present conditions and method of fixing railroad rates. These parties were, no doubt, representing concerns who either ship such a volume of freight or are so situated that they can bring some special influence to bear in securing fair rates or rates that are lower than fair.

These men, however, are only a drop in the bucket compared to the thousands of small shippers who are being charged unjust rates and have suffered under this condition for so many years that they considered it almost hopeless even to make a protest. Only recently, when the House passed the Esch-Townsend bill and our President has taken a stand for the people at large, there has been a ray of hope for the future.

It is certainly more important for the prosperity of our country to have a large number of comparatively small industries rather than a few very large ones, and it is the former who are being treated unjustly at present. When a railroad handling a certain line of freight from the shipping point to destination, as in our Minneapolis case, openly acknowledges the injustice of a certain rate they are charging, but are unable in the course of four or five years to find some means of correcting that rate, it is high time for some higher power to step in and do it for them.

Yours, truly,

THE E. R. WAGNER MANUFACTURING COMPANY,
Per E. R. WAGNER, *Manager*.

STATEMENT OF MR. E. P. BACON.

The CHAIRMAN. You will please state your name, residence, and occupation.

Mr. BACON. E. P. Bacon, and my residence is Milwaukee, Wis.

To the Senate Committee on Interstate and Foreign Commerce.

GENTLEMEN: I beg leave respectfully to call your attention to the fact that the objections and arguments presented to your honorable body by the representatives of the railway interest in opposition to legislation enlarging the powers of the Interstate Commerce Commission have been directed against a form of legislation that has not been proposed in any of the numerous bills that have been introduced in Congress on the subject during the past six years, and so far as I am aware is not contemplated by any of the advocates of legislation

for the protection of the public interest against undue exactions or discriminatory rates or practices on the part of the carriers of the country. The burden of their contention is that to confer upon any governmental body the authority to fix all the rates for the transportation of persons and property throughout the country would be disastrous to the commercial interests of the country, as well as to the interests of the carriers, and that no governmental body could be established that would be capable of dealing with the subject in this way. I am ready, as a representative of the commercial organizations of the country associated in the effort to secure legislation bringing the carriers under suitable governmental supervision, to concede these points, once for all, and will say, in fact, that were such legislation as has been argued against by the representatives of the railway interest proposed the interests I have the honor to represent would, I believe, oppose it as strenuously as they have advocated the form of legislation which is embodied in the successive bills that have been introduced in Congress at their instance, the consideration of which resulted in the passage by the House of Representatives, at the last session, b yan almost unanimous vote, of what is generally known as the Esch-Townsend bill.

It is not necessary for me to state to your honorable body that this bill does not provide for conferring upon the Interstate Commerce Commission, or any other governmental body, any such power as that which has been contended against by the representatives of the railway interest. It goes no further than to provide that when rates complained of and found upon full hearing to be either unreasonable per se or discriminative in their effect in relation to different communities or different descriptions of traffic the Commission shall have power not only to order their discontinuance, as under the present law, but to require the substitution of such rates in place thereof as in its judgment are reasonable and just in the premises. To term this the "rate-making" power, as has been done, seems to me, whether so intended or not, to be misleading. It would more properly be termed the "rate-revising" power. It is hardly conceivable that any governmental body appointed by the President and confirmed by the Senate to administer equal justice between the public and the carriers would be likely to exercise this power otherwise than with due consideration of the interest of both parties or that in its purpose to protect the public against injustice on the part of the carrier it would inflict injustice upon the carrier. Neither is it to be believed that such a body would so abuse the power as to restrict the revenues of the carrier to a limit where they would not afford an ample return upon the capital already invested in the construction and equipment of the railways of the country or as would preclude the further investment of capital in providing needed increase in transportation facilities with the continued growth of population and the rapid development of commercial and industrial interests. Nor is it to be apprehended that the power would be exercised to an extent that would necessitate a reduction in the wages of any portion of the great army of railway employees or in the princely salaries rightfully paid to the men of great executive ability and mental grasp who manage and operate the railway systems of the country. All such suggestions that have been offered by the opponents of

proper governmental supervision over railway rates are wholly chimerical and are hardly worthy of a passing thought.

The honorable committee has had the benefit of a presentation of railway conditions and governmental regulation in Germany and Great Britain, which has been interesting and instructive, but the conditions of traffic in those countries and the methods of regulation are so different from those prevailing or contemplated in this country that they seem to afford little, if any, guide to the solution of the questions that confront us. According to the information presented, railway rates in Germany are primarily fixed by the Government, and in Great Britain schedules of maximum rates are prescribed by the board of trade, a body corresponding in a large degree with our Interstate Commerce Commission, and it is provided that any rates fixed by the carriers that are below the maximum rates prescribed shall not be increased except with the consent of the board of trade. Neither of these systems bears any resemblance to that now in effect or that it is proposed to put into effect in this country. Hence I am unable to see that the information has any practical bearing upon the legislation contemplated other than to warn us against the adoption of either of those systems, which, so far as my information extends, no one proposes shall be done.

Having considered two phases of legislation which have been strenuously objected to by the railway interest, although not advocated by anyone, so far as I have observed, let us turn our attention to the legislation actually proposed. I maintain that in the present state of the law the primary requirement of the "Act to regulate commerce," namely, that "all charges made for any service rendered or to be rendered in the transportation of passengers or property, or in connection therewith, shall be reasonable and just," is without means of enforcement, except to such extent as the carrier that, upon full hearing, is held to have violated it and has been notified, in accordance with the provisions of the fifteenth section of said act, "to cease and desist from such violation," may determine for itself what change it will make in the rate condemned. It is the purpose of the legislation proposed to invest the Interstate Commerce Commission with the authority and impose upon it the duty of determining what change is requisite in the rate to bring it into conformity with the standard laid down in this primary requirement of the act, such change to be put into effect by the carrier upon due notice. It is only by this means that practical effect can be given to the fundamental principle of the act. Without this it is a mere declaration without force or effect and utterly impotent. Is it wise, is it right, that the determination of the vital point at issue, namely, the extent to which the condemned rate is unjust or unreasonable, should be left to one of the parties in interest, and that to the party whose judgment or disposition has been found to be at fault? Why should it not be determined, as in all cases of litigation, by a disinterested tribunal having jurisdiction of the case? If it is to be left to one of the parties in interest, why to the party that has inflicted the injury rather than to the party injured?

In view of the opinion recently promulgated by the Attorney-General to the effect that the prescribing of rates for the future having been declared by the Supreme Court to be a legislative and not a judicial act, "it follows necessarily that, under our scheme of govern-

ment, Congress has not the right to vest the power in the courts either by conferring original or appellate jurisdiction over the subject," it may well be questioned whether it is advisable or expedient to provide a special court, as proposed in the Esch-Townsend bill, for the review of cases in which a rate has been substituted by the Commission for one found to be in conflict with the requirement of the statute. The carrier has ample recourse in the existing courts in case of the Commission having required the substitution of a rate that the carrier deems to be noncompensatory, and there seems to be no occasion for complicating the main question whether the proposed power shall be conferred upon the Commission with the question of the establishment of an additional court. At all events, the latter question can be safely left for future consideration with the light of experience under the operation of the amendment of the law proposed. In my humble opinion its operation will be found to be to a large extent automatic. The mere existence of the power proposed will exert a restraining influence upon the carrier, resulting in the prevention of the imposition of rates that can not be successfully defended in case of being challenged before the Commission; and consequently, cases brought before the courts will be much less numerous than heretofore. Most of the cases that have been brought before the courts under the present law, as is well known, have been brought on the ground that the Commission in its action has exceeded the powers conferred upon it by the existing law.

The opinion of the Attorney-General above mentioned leads me to take up the proposition made by representatives of the railway interest, which seems to have found some favor with members of your honorable committee, that the question of the reasonableness or justness of a rate complained of be submitted to the courts for determination, instead of to the Commission, as now provided. This would simply be transferring the impotency of the Commission under the present law to the courts, as the latter can not be empowered to fix a rate for the future to take the place of one found to be unjust or unreasonable, and consequently would be unable to apply the only practical remedy for the wrong found to exist. This, as will readily be seen, would defeat the very purpose of the legislation which has been brought before the committee for its consideration, the enactment of which has been continuously urged upon Congress by the commercial and industrial interests of the country during the past six years. I can not believe that this committee will seriously consider any expedient of shifting the present helplessness of the public in the matter from one governmental instrumentality to another. Far better would it be to deny absolutely the relief sought.

A persistent effort has been made by representatives of the railway interest to divert public attention from the real issue by the statement that the payment of rebates constitutes the chief evil in the transportation situation, which they aver are a thing of the past, and, that if not, the proposed legislation would not tend to abate the evil. Whether or not they are "a thing of the past" is known only to the carriers themselves and to the recipients of the rebates, and it is not to the interest of either to disclose the fact. That the practice is much less general since the passage of the Elkins Act of 1903 than previously there is good reason to believe. But the legislation

now proposed is not calculated to have any effect upon that practice in any way, and it is a mere subterfuge to assume that it has any bearing upon it. The sole purpose of the legislation sought is to provide effectual means to prevent discrimination in published tariff rates applied to the traffic of the country, and to prevent the imposition or continuance of tariff rates that are unreasonable in themselves. The payment of rebates, or a concession from published tariff rates by any device whatever, constitutes only one of numerous forms of discrimination, and, while perhaps the most offensive form, it is not, in my judgment, the most injurious one. This relates wholly to discrimination between individuals, which the severe penalties prescribed in the Elkins Act seem to have largely put a stop to. It remains only to provide effective means of detection through a systematic method of governmental inspection of the books and accounts of the carriers to completely prevent it. But the grosser forms of discrimination, those between different localities and different commodities, between local and through traffic, between carload and less than carload lots, and between domestic and export or import traffic, are carried out by means of published tariff rates and can be prevented only by conferring the power upon some proper tribunal to make such change therein as may be necessary to correct the wrong found to exist. This is the power which the commercial interests I have the honor to represent have so long been seeking to have Congress confer.

In this connection I beg leave respectfully to suggest for the consideration of the committee the advisability, in case it should see fit to recommend the conferring of this power, of restricting the bill prepared for the purpose to this single provision, in order that it may be considered independently of any other, and be acted upon without reference to any other amendment of the law that the committee may deem it best to recommend; this being the all-important question at issue. The collateral subjects treated upon during this discussion can be more readily reached, it seems to me, through amendments to the Elkins Act, which applies specifically to discriminations between individuals, brought about by concessions of some kind from published tariff rates, or by ingenious devices whereby one shipper is given an advantage over another. This is a wholly different purpose, as will readily be perceived, from that of clothing the Commission with power to determine the extent to which published tariff rates complained of are unjust in relation to communities or different descriptions of traffic, or otherwise, or are unreasonable in themselves, and bears no relation to it.

The constitutional questions involved in the controversy having been determined, so far as they can be otherwise than by a decision of the Supreme Court, in favor of the proposed legislation, in the opinion recently announced by the Attorney-General, in response to an inquiry made by your honorable committee, the committee is relieved from all responsibility in relation thereto, and is free to act upon it own judgment as to what is for the best interest of the public as a whole, including the rightful interests of the railway corporations, as well as those of the people at large. There should be no conflict between the two, but so long as self-interest dominates the human mind in its action, so long will it be necessary to provide

competent tribunals to determine when the exactions of one party encroach upon the rightful interests of another, with power to enforce such determination. It is such a tribunal that the interests I represent seek to have established by Congress to determine disputes constantly arising between the carriers and the public, instead of leaving the final determination, as is now the case, in the hands of one of the parties in interest.

Mr. Chairman, in view of the fact that the statement has been frequently called into question that the Commission exercised this power of changing rates during the first ten years of its existence, I have obtained a statement prepared by the Commission, dated December 21, 1896, in reply to a request from the Senate for information on that point.

Senator KEAN. What is the number of the Senate document?

Mr. BACON. No. 30, Fifty-fourth Congress, second session, in which is stated all cases in which they have ordered changes in rates or classification.

Senator DOLLIVER. Does it go into the details of each case?

Mr. BACON. It does give a brief statement of the points raised in the case and decided upon.

Senator DOLLIVER. Well, I would like to have that printed.

Mr. BACON. I will file it with the committee, to be made a part of the record, and I will also file a statement which I have made describing this report which has been made by the Interstate Commerce Commission, and which, if the committee desires, I will read. It covers about five pages. I will also have that incorporated in the printed record as part of my remarks. It is a statement, as I say, in relation to this document which I filed.

The papers referred to by the witness are as follows:

[Senate Document No. 30, Fifty-fourth Congress, second session.]

CHANGES IN TRANSPORTATION CHARGES, ETC.

DECEMBER 21, 1896.—Referred to the Committee on Interstate Commerce and ordered to be printed.

The Vice-President presented the following letter from the Interstate Commerce Commission, transmitting statement respecting cases in which it has ordered any change in transportation charges, in the classification of freights, or in practices affecting such charges, as directed by resolution of the Senate adopted March 18, 1896.

INTERSTATE COMMERCE COMMISSION,
Washington, December 21, 1896.

THE PRESIDENT OF THE SENATE:

The Interstate Commerce Commission transmits the information respecting cases in which it has ordered any change in transportation charges, in the classification of freights, or in practices affecting such charges, as directed by the following resolution of the Senate adopted March 18, 1896:

Resolved. That the Interstate Commerce Commission be directed to transmit to the Senate a statement showing each case in which it has ordered any carrier or carriers subject to its jurisdiction to make any change in the classification of freight or in the rates charged for moving passengers or property, or any modification in the practices affecting such charges, and in connection with every such

order; the classification or rates or practices in effect at the time when complaint was filed; those in effect at the date of the order; those directed to be placed in effect; those, if any, put in effect in compliance with such order; and those in effect at the present time in each case as aforesaid, and the reasons for their action in each case.

Attached hereto and marked Exhibit A is a list of cases decided by the Commission, with a memorandum or statement as to each, showing the question or questions involved in each case, the changes ordered to be made respecting rates, charges, classifications, or practices of carriers, and containing, in connection with every such order, all the information called for by the Senate resolution other than the reasons of the Commission for the orders made in these cases, respectively. This list contains all the cases in which the Commission has ordered any changes in rates, classifications, or practices of carriers, and takes no account of cases, complaints, or disputes adjusted without suit or trial or which have been dismissed after hearing and investigation.

In every case investigated, heard, or tried in which the Commission has made any recommendation or order, it has made a report in writing in respect thereto, which report included the facts upon which the conclusions or orders of the Commission in each case were based, and in every such case the report, printed in pamphlet form, showing the reasons for the action of the Commission in each case, has been promptly mailed to every Member of Congress (Senators and Members of the House of Representatives) by the Commission. These reports have also been published in six volumes, and copies thereof have been furnished by the Commission to the Law Library at the Capitol, the House Committee on Interstate and Foreign Commerce, and the Senate Committee on Interstate Commerce. These volumes, containing more than 4,000 pages, being already in possession of or so conveniently accessible to the Senate, the Commission has not deemed it necessary to incur the expense of copying them for the purpose of transmittal herewith.

Respectfully submitted.

WM. R. MORRISON, *Chairman.*

EXHIBIT A.

16. THE PROVIDENCE COAL COMPANY V. THE PROVIDENCE AND WORCESTER RAILROAD COMPANY.

(Decided July 23, 1887.)

Ordered. That defendant cease and desist from giving or offering to give a discount or rebate of 10 per cent from its published coal rates to persons who shall receive consignments of coal in any one year amounting to 30,000 tons or upward at any one station on its road unless the like discount or rebate is made to all persons; to cease and desist from charging more for the interstate transportation of coal from Providence than from East Providence, R. I.; and to correct its published schedules of rates and charges accordingly.

Order complied with.

17. THE MICHIGAN CENTRAL RAILROAD COMPANY V. THE CHICAGO AND GRAND TRUNK RAILWAY COMPANY.

(Decided July 25, 1887.)

Ordered. That defendant cease and desist from refusing to sell thousand-mile tickets to the public generally at as low a rate as it sells them to commercial travelers.

Order complied with.

18. LOUIS LARRISON v. THE CHICAGO AND GRAND TRUNK RAILWAY COMPANY.

(Decided July 25, 1887.)

Ordered, That defendant cease and desist from refusing to sell thousand-mile tickets to the public generally at as low a rate as it sells them to commercial travelers; defendant also required to publish its rates for mileage tickets in its schedules of rates, fares, and charges.

Order complied with.

14 and 15. THE BOSTON AND ALBANY RAILROAD COMPANY v. THE BOSTON AND LOWELL RAILROAD COMPANY ET AL. (two cases).

68. THE VERMONT STATE GRANGE v. THE BOSTON AND LOWELL RAILROAD COMPANY ET AL.

(Decided September 20, 1887.)

Ordered, That the Central Vermont Railroad Company and the other defendants concerned with it in interstate traffic between Boston, Mass., and St. Albans, Vt., or between Boston, Mass., and Ogdensburg, N. Y., including those points, respectively, cease and desist from charging or receiving in respect of any part of such traffic greater compensation for the transportation of a like kind of property for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance.

Order complied with.

19. CHARLES W. KEITH ET AL. v. THE KENTUCKY CENTRAL RAILROAD COMPANY ET AL.

(Decided October 21, 1887.)

Ordered, That defendants' legal duty is to provide reasonable and proper facilities for receiving on board and discharging from their cars all live stock offered for shipment or brought over their respective roads and their connections to or from Covington, Ky., free of charges other than the usual transportation charges; that such legal duty is not fully discharged by receiving on or delivering from their cars live stock at a depot access to which subjects receivers and shippers of live stock to the payment of lottage or charges other than the usual transportation charges; that until defendants provide some other suitable and convenient place at Covington where complainants may receive and ship live stock free from other than customary transportation charges, defendants are enjoined to receive from and deliver to complainants at their platform and stock yards at Covington all live stock offered for shipment by said complainants or transported for them by defendants to or from Covington; that any of the parties to this proceeding may apply for a modification of this order at any time after the final determination of the case of George T. Bliss and Isaac F. Gates *v.* The Kentucky Central Railroad Company, now pending on appeal in the United States Supreme Court and involving the questions controverted herein.

The above-mentioned case of Bliss and Gates, known as the Covington Stock Yards case, was decided by the Supreme Court in March, 1891 (139 U. S., 128), and the ruling of the court was to the same effect as the decision and order of the Commission in this case of Keith *v.* Kentucky Central Railroad Company.

29. W. U. SMITH v. THE NORTHERN PACIFIC RAILROAD COMPANY.

(Decided October 31, 1887.)

Defendant ordered to cease and desist from selling "Round-trip land-exploring rebate tickets" or "Settlers' one-way land tickets" at lower rates than those established by it for the sale of passenger tickets to the public generally.

Order complied with.

27. THE BOARDS OF TRADE UNION OF FARMINGTON, NORTHFIELD, FARIBAULT, AND OWATONNA v. THE CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY.

(Decided November 1, 1887.)

Ordered, That while defendant charges a rate of 7½ cents per hundred from Minneapolis and other points on its River and La Crosse divisions to Milwaukee

and Chicago and other points in Iowa and Illinois on wheat, flour, and mill stuffs, it must not exceed a rate of 10 cents per hundred, or a difference of one-third of the amount of the lesser charge, for transporting the like kind of property to the same points from Farmington, Northfield, Faribault, and Owatonna, Minn. Rates of 15 and 13½ cents were in effect from the complaining towns when complaint was filed and when order was issued.

Order complied with.

20. E. B. RAYMOND v. THE CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY.

(Decided November 21, 1887.)

Defendant ordered to so readjust its rates and charges to Milwaukee and Chicago from Mazeppa, on its Wabasha division, and Lake City and Red Wing, on its River division, that the difference in favor of the points named on the River division shall neither exceed 2½ cents nor one-third of its own rates, and while the rates and charges on flour, grain, and other like products are 7½ cents on the hundred pounds from Lake City and Red Wing to Milwaukee and Chicago, the rates from Mazeppa to Milwaukee and Chicago shall not exceed 10 cents on the hundred pounds on the like kind of property. Rate of 12½ cents was in effect from Mazeppa to Milwaukee and Chicago when complaint was filed and when order was issued.

Order complied with.

76. THE MANUFACTURERS AND JOBBERS' UNION OF MANKATO v. THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY ET AL.

(Decided November 21, 1887.)

No order entered on account of concession of rates demanded by defendant.

Case reopened on stipulation of parties, and decided June 14, 1890. *Ordered*, That a higher charge for the transportation of like classes of freight over defendants' lines from Chicago, Ill., to Mankato, Minn., than from Chicago to Waterville, Minn., and other points taking the Waterville rate is not unlawful, but that the rates established and in force over the defendants' lines from Chicago to Mankato were relatively excessive at the time the complaint was filed, and that they must not exceed a difference of 10 per cent above the rates charged on the respective classes of freight from Chicago to Waterville and points taking the Waterville rate.

Rates from Chicago were 20 per cent and upward higher to Mankato than to Waterville and said other points when the complaint was filed, and they were about 10 per cent higher at the date of the order.

Order complied with.

47. W. O. HARWELL ET AL. v. THE COLUMBUS AND WESTERN RAILROAD COMPANY ET AL.

(Decided December 3, 1887.)

Defendant, The Western Railway of Alabama, ordered to cease and desist from refusing through rates and through bills of lading on cotton offered for shipment at Opelika for New Orleans.

Through rates are published.

30. MILTON EVANS v. THE OREGON RAILWAY AND NAVIGATION COMPANY.

42. WILLIAM H. REED v. THE OREGON RAILWAY AND NAVIGATION COMPANY.

(Decided December 3, 1887.)

Defendant ordered to cease and desist during the present grain season, that is, until the 30th day of June, 1888, from charging or receiving more than 23½ cents per 100 pounds, or $4.70 per ton, on wheat transported over its railroad lines from Walla Walla, Wash., to Portland, Oreg.

The rate from Walla Walla to Portland was 30 cents per 100, or $6 per ton.

when the complaint was filed, and the rate was 25 cents per 100, or $5 per ton, when the order was issued.

Order complied with.

Present rate, 19½ cents. (See p. 33.)

21. WILLIAM H. COUNCILL v. THE WESTERN AND ATLANTIC RAILROAD COMPANY.

(Decided December 3, 1887.)

Defendant ordered to cease and desist from subjecting colored persons to undue and unreasonable prejudice and disadvantage by furnishing to colored persons purchasing first-class tickets accommodations which are not equally safe and comfortable with those furnished to other first-class passengers.

Complainant subsequently commenced proceedings to recover damages. The controversy was settled between the parties, but the Commission has not been notified how the compromise was effected.

86. THOMAS J. REYNOLDS v. WESTERN NEW YORK AND PENNSYLVANIA RAILWAY COMPANY ET AL.

(Decided January 13, 1888.)

Defendants ordered to cease and desist from charging more for the transportation of railroad ties from points in Pennsylvania to Salamanca and Olean, N. Y., than they charge for the transportation of lumber between the same points.

Order complied with.

46. WILLIAM H. HEARD v. THE GEORGIA RAILROAD COMPANY.

(Decided February 15, 1888.)

Defendant ordered to cease and desist from subjecting colored passengers to undue and unreasonable prejudice and disadvantage, and that so long as its rule separating passengers is maintained its duty is to furnish for all passengers paying the same fare cars in all respects equal and provided with the same comforts, accommodations, and protection for travelers.

(See p. 8.)

84. W. B. FARRAR & CO. v. THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY COMPANY ET AL.

(Decided February 15, 1888.)

Defendants ordered to cease and desist from charging 22 cents per 100 pounds on lumber in carloads from Dalton, Ga., to Roanoke and Lynchburg, and not to exceed a rate of 17 cents per 100 pounds on lumber in carloads from Dalton to Roanoke, nor 18 cents per 100 pounds from Dalton to Lynchburg. The 22-cent rate was also in effect when the complaint was filed.

Order complied with.

85. JAMES PYLE & SONS v. THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY COMPANY.

(Decided February 15, 1888.)

Defendant ordered to cease and desist from charging a rate of 73 cents per 100 pounds for the transportation of pearline from New York, N. Y., to Atlanta, Ga., and not to charge for such service any rate in excess of 60 cents per 100 pounds; that while a special rate of 33 cents per 100 pounds is maintained on common soap by the defendant, pearline must be in the fifth class of said defendant and of the Southern Railway and Steamship Association; that defendant's rates of 32 cents on pearline and 20 cents on common soap for 100 miles and 49 cents on pearline and 38 cents on common soap for 500 miles shall, in their relative differences, be maintained.

The rate of 73 cents on pearline from New York to Atlanta was in effect when the complaint was filed and when the order was issued, and pearline was

in the fourth class of the Southern Railway and Steamship Association classification.

Order complied with.

78. JOHN D. HECK AND L. J. A. PETREE V. THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY COMPANY ET AL.

(Decided February 15, 1888.)

Defendants ordered to cease and desist from failing and refusing to receive coal for interstate transportation when tendered by complainants, and henceforward to receive and forward coal upon just and reasonable terms when so offered for transportation on any part of the line of the Coal Creek and New River Railroad, and upon terms which are equal as between complainants and other parties from whom coal is received and transported over said Coal Creek and New River Railroad.

Order complied with.

Coal Creek and New River and East Tennessee, Virginia and Georgia roads now parts of Southern Railway system.

51. GEORGE RICE V. THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY.

(Decided February 23, 1888.)

Defendant ordered to cease and desist from charging more per 100 pounds for the transportation of petroleum oil in barrels in carload lots, including the barrels, than it contemporaneously charges for the transportation per 100 pounds of such oil in tanks. Defendant also ordered to cease and desist from making uniform rates on petroleum oil by the tank car, irrespective of the weight or quantity, when the capacity of the tank cars in use on its line is not uniform or substantially so; and also to cease and desist from further giving undue and unreasonable preference and advantage to the Standard Oil Company of Kentucky and others shipping oil in barrels.

Order complied with.

52. GEORGE RICE V. THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY.

(Decided February 23, 1888.)

Order similar to that entered in Rice *v.* Louisville and Nashville Railroad Company (No. 51).

Order complied with.

55. GEORGE RICE V. THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY.

(Decided February 23, 1888.)

Order similar to that entered in Rice *v.* Louisville and Nashville Railroad Company (No. 51).

Order complied with.

56. GEORGE RICE V. THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY ET AL.

(Decided February 23, 1888.)

Order similar to that entered in Rice *v.* Louisville and Nashville Railroad Company (No. 51).

Order complied with.

58. GEORGE RICE V. THE NEWPORT NEWS AND MISSISSIPPI VALLEY COMPANY ET AL.

(Decided February 23, 1888.)

Order similar to that entered in Rice *v.* Louisville and Nashville Railroad Company (No. 51).

Order complied with.

59. GEORGE RICE v. THE NEWPORT NEWS AND MISSISSIPPI VALLEY COMPANY ET AL.

(Decided February 23, 1888.)

Order similar to that entered in Rice *v.* Louisville and Nashville Railroad Company (No. 51).
Order complied with.

99. RIDDLE, DEAN & CO. v. THE NEW YORK, LAKE ERIE AND WESTERN RAILROAD COMPANY ET AL.

(Decided February 24, 1888.)

Declared and adjudged that defendant, the New York, Lake Erie and Western Railroad Company, violated provisions of the act to regulate commerce by refusing to furnish complainants a fair proportion of cars and to transport coal tendered by them for carriage from Federal Springs mines to Cincinnati at the tariff rate of $1.70 per ton up to November 20, 1887.
No action by carrier necessary.

83. JOHN H. MARTIN ET AL. v. THE SOUTHERN PACIFIC COMPANY ET AL.

(Decided May 17, 1888.)

Entry of order suspended until September 1, 1888, and the defendant and other transcontinental lines having, on or about said date, put new schedules into effect and adopted an entirely new system of making rates upon transcontinental lines (In re Tariffs of Transcontinental Lines, 2 I. C. C. Rep., 324), the issuance of an order in this case was considered unnecessary.

81. WILLIAM C. SCOFIELD ET AL. v. THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY.

(Decided July 19, 1888.)

Defendant ordered to charge the same rates on oil shipped in barrels in carload lots in stock cars and other cars that it charges upon oil in tanks—by the pound, and not by the barrel.
Order complied with.

133. FRANK L. HURLBURT v. THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY.

134. FRANK L. HURLBURT v. THE PENNSYLVANIA RAILROAD COMPANY.

(Decided July 20, 1888.)

Defendants required to place hub blocks in class 6 of their classification of freight articles.
At the time of complaint and date of the order fifth-class rates were charged.
Order complied with.

101. PARKHURST & CO. v. THE PENNSYLVANIA RAILROAD COMPANY ET AL.

100. JOHN HENRY NICOLAI v. THE PENNSYLVANIA RAILROAD COMPANY ET AL.

(Decided July 23, 1888.)

Defendants ordered to cease and desist from charging more than 40 cents per barrel for the transportation of crude oil from Washington, Pa., to Baltimore, Md.
A rate of 50 cents per barrel was in effect when the complaint was filed and at the date of the order.
Present rate, 64 cents per barrel, or 16 cents per 100 pounds.
Proceedings for damages instituted in the western district of Pennsylvania have been decided adversely to the complainant.

118. THE KENTUCKY AND INDIANA BRIDGE COMPANY v. THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY.

(Decided August 2, 1888.)

Defendant ordered to cease from refusing to receive from complainant and the carriers using its track the traffic brought and offered to it at the point of connection in Louisville, Ky.; defendant also ordered to allow and afford to complainant, as a common carrier, at Louisville the same and equal facilities which it accords to all other common carriers at points of connection with their lines, respectively.

(See decision of United States circuit court, 37 Fed. Rep., 567, refusing to enforce this order.)

143. IN RE CHICAGO, ST. PAUL AND KANSAS CITY RAILWAY COMPANY.

(Decided September 19, 1888.)

Defendant ordered to cease and desist from charging at stations on its line between Chicago, as one terminus, and St. Paul, Minn., or Minnesota Transfer, regarded as the other terminus, for the transportation of freight from either terminus, or from any intermediate station, rates which in the aggregate are greater than those contemporaneously charged by it for the transportation of like freights on the same line, in the same direction, from one terminus of said road to the other.

Order complied with.

Under the normal basis, rates are not higher to intermediate points than from Chicago, Ill., to St. Paul and Minneapolis.

97. THE NEW ORLEANS COTTON EXCHANGE v. THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY ET AL.

(Decided November 26, 1888.)

Defendant, The New Orleans and Northeastern Railroad Company, ordered not to exceed a rate of $1.50 per bale for the transportation of compressed cotton from Meridian, Miss., to New Orleans, La.

Rate in effect at the time of complaint and when the order was issued, $2 per bale.

Order complied with.

Present rate, $1.65 per bale. (See p. 10.)

132. T. M. C. LOGAN ET AL. v. CHICAGO AND NORTHWESTERN RAILWAY COMPANY.

(Decided March 22, 1889.)

Defendant ordered to so readjust its Northwestern Iowa rates as to make them substantially the same to Chicago for approximately the same distances from stations on its Sioux City and Mapleton line west of Maple River Junction and east of Onawa as from stations on its main line west of Maple River Junction, and to cease and desist from charging any greater aggregate compensation for the transportation of a like kind of property for a shorter than for a longer distance, in the same direction, the shorter being included within the longer distance, over its line from Sioux City to Chicago by the way of Onawa, Mapleton, Ida Grove, Arthur, Odebolt, and Maple River Junction, or over its line from Sioux City to Chicago by the way of Onawa, River Sioux, Modale, and Missouri Valley.

Order complied with.

151. IN RE TARIFFS AND CLASSIFICATIONS OF THE ATLANTA AND WEST POINT RAILROAD COMPANY ET AL.

(Decided March 30, 1889.)

Defendants ordered to correct and arrange, without unnecessary delay, their respective tariffs, whether individual or joint tariffs, in such manner as to comply with the provisions of the act to regulate commerce in the particulars such

fied as to each carrier and line of carriers in the report and opinion of the Commission filed herein; and that each of said carriers make a report to the Commission of its action in the premises.

Reports filed showing many changes in rates involved in this investigation.

186. In re Investigation of the Acts and Doings of the Grand Trunk Railway Company of Canada.

(Decided April 18, 1889.)

Respondent ordered to cease and desist from charging or collecting less than its established and published rates and charges at the time in force for the transportation of coal from Buffalo, Black Rock, and Suspension Bridge, N. Y., to the city of Hamilton and other points in the Dominion of Canada.

No disobedience of order reported.

166. William H. Heard v. The Georgia Railroad Company.

(Decided May 8, 1889.)

Defendant ordered to cease and desist from subjecting colored passengers to undue and unreasonable prejudice and disadvantage, and required, so long as its rule separating passengers into different cars is maintained, to furnish for all passengers paying the same fare cars in all respects equal and provided with the same comforts and accommodations for travelers, and to give colored passengers the same protection that it affords to white passengers against disorderly conduct on the part of other passengers and other persons.

Case pending in United States circuit court for northern district of Georgia to enforce order.

130. The New York Produce Exchange v. The New York Central and Hudson River Railroad Company et al.

(Decided June 19, 1889.)

Rates charged by defendants for the inland transportation from Chicago and other western points to New York City of property shipped under through bills of lading to foreign ports found to be unlawfully less than the rates charged by defendants for similar service in the inland transportation of like kind of property as domestic shipments, and the defendants were ordered to cease and desist therefrom.

The order was complied with.

(See decision of United States Supreme Court in Texas and Pacific Railway Company *v.* Interstate Commerce Commission, 162 U. S., 197.)

131. Henry McMorran et al. v. The Grand Trunk Railway Company of Canada et al.

(Decided September 25, 1889.)

Ordered, That the defendant, the Grand Trunk Railway Company of Canada, cease and desist from charging more than 8 cents per 100 pounds for the transportation of grain and grain products over its line from Port Huron, Mich., to Buffalo, N. Y., while a through rate of 15 cents per 100 pounds on grain and grain products is in effect over the lines of the Chicago and Grand Trunk Railway Company and the Grand Trunk Railroad Company from Chicago, Ill., to Buffalo, N. Y.

Rates of 8 cents on grain and 10 cents on grain products from Port Huron to Buffalo were in effect when the complaint was filed and when the order was issued.

Order complied with.

173. James & Abbott v. The East Tennessee, Virginia and Georgia Railway Company et al.

(Decided September 25, 1889.)

Ordered, That defendants cease and desist from charging any greater aggregate compensation for the transportation of lumber in carloads for the shorter

than for the longer distance in the same direction, the shorter being included within the longer distance, over their lines from Atlanta, Ga., and Johnson City, Tenn., to Boston, Mass.; that the rate charged by defendants on lumber in carloads from Johnson City, Tenn., to Boston, Mass., must not exceed 33 cents per 100 pounds, that being the rate in effect over other lines from points in neighboring territory to the same destination.

Rates of 34 cents from Atlanta and 36 cents from Johnson City to Boston were in effect when the complaint was filed and when the order was issued.

Order complied with.

231. HERVEY BATES ET AL. v. THE PENNSYLVANIA RAILROAD COMPANY ET AL.

(Decided February 7, 1890.)

Defendants ordered to revise the tariffs of rates in force over their respective lines from Indianapolis, Ind., to eastern seaboard points, so that by or before February 20, 1890, the rate on corn and its direct or immediate products shall be the same, and from and after said February 20, 1890, each of the above-named railroad companies is required to cease and desist from discriminating in rates between corn and the said products of corn transported by them or either of them from Indianapolis to eastern seaboard points.

Case retained for the purpose of citing in as parties other railroad companies operating lines leading from Indianapolis to eastern points unless said other railroad companies comply with the foregoing requirements within the time above specified.

Same case. February 21, 1890, rehearing granted.

The difference in rates between corn and corn products from Indianapolis to New York was at the time of the complaint 4½ cents per 100 pounds. It appeared on rehearing that this differential had been reduced to 2½ cents per 100 pounds. Upon evidence produced at the rehearing the Commission vacated the foregoing order. The rates on corn and corn products are now the same.

215. THE PITTSBURG, CINCINNATI AND ST. LOUIS RAILWAY COMPANY v. THE BALTIMORE AND OHIO RAILROAD COMPANY.

(Decided February 21, 1890.)

Defendant ordered to print, post, and file schedules showing the rates, fares, and charges now or hereafter established by it for round-trip passenger excursion tickets between points on its lines or between points on its lines and points or the lines of other common carriers with whom it joins or hereafter may join in establishing rates, fares, and charges therefor, in conformity with the provisions of section 6 of the act to regulate commerce; and to cease and desist from charging rates for the transportation over its lines of a number of persons traveling together in one party which are less for each person than rates contemporaneously charged by said defendant under schedules lawfully in effect for the transportation of single passengers between the same points.

(See decision of United States Supreme Court refusing to enforce order, 145 U. S., 263.)

195. NEW ORLEANS COTTON EXCHANGE v. THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY ET AL.

180. NEW ORLEANS COTTON EXCHANGE v. THE ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

(Decided April 11, 1890.)

Held, That a rate of $1.65 per bale on compressed cotton from Meridian, Miss., to New Orleans, La., over the line of the Cincinnati, New Orleans and Texas Pacific Railway Company, and not more, is a reasonable and just rate for that service; and that a rate of as much as $2.15 per bale on uncompressed cotton from Meridian, Miss., to New Orleans, La., carried over said line, and not more, is a reasonable and just rate for that service.

Held further, That a rate of as much as $1.65 per bale on compressed cotton from Jackson, Miss., to New Orleans, La., carried over the line of the Illinois

Central Railroad Company, and not more, is a reasonable and just rate for that service, and also that a rate of as much as $2.15 per bale on uncompressed cotton from Jackson, Miss., to New Orleans, carried over said line, and not more, is a reasonable and just rate for that service.

Orders entered allowing the above-named carriers until June 1, 1890, to adjust their respective rates on cotton at Jackson and Meridian, as above set forth and in accordance with the report and opinion of the Commission in these cases.

Rates in effect on cotton during the pendency of the case were: Meridian to New Orleans, uncompressed, $2.15, and compressed, $1.50 per bale; Jackson to New Orleans, uncompressed, $2.25, and compressed, $2 per bale. Rates of $2.15 on uncompressed and $1.65 on compressed cotton from both Meridian and Jackson were ordered, and the order was complied with.

J. B. Pankey v. The Richmond and Danville Railroad Company et al.

(Decided May 9, 1890.)

Ordered, That the defendant, the Richmond and Danville Railroad Company, on payment to it by the claimant of the sum of $8.66 within thirty days, be, and it is hereby, required to deliver to the claimant the books consigned by him from Troupe, Tex., to Fort Lawn, S. C., and now held by it for the payment of transportation charges thereon; and that the defendant, the International and Great Northern Railroad Company, be, and it is hereby, required to repay to claimant the sum of 81 cents overcharge, made and collected by it on claimant's shipment of books from Troupe aforesaid, on demand in writing therefor, accompanied by the receipt of the Richmond and Danville Railroad Company for the payment of the transportation charges justly due on said shipment.

No disobedience of order reported.

149. Stone & Carten v. The Detroit, Grand Haven and Milwaukee Railway Company.

(Decided May 12, 1890.)

Defendant ordered to cease and desist from furnishing free cartage of freights at Grand Rapids, Mich., whereby rebates from its lawfully published schedules of rates, fares, and charges at its station or office in Grand Rapids are given to shippers and consignees and charges for the transportation over its line of property shipped from eastern points to Grand Rapids aforesaid are made less than charges for the transportation over its line of like kinds of property shipped from the same eastern points to Ionia, Mich.

(See recent decision of United States circuit court of appeals in Detroit, Grand Haven and Milwaukee Railway Company *v.* Interstate Commerce Commission, reversing decree of circuit court enforcing above order. Case now pending on appeal to Supreme Court of the United States.)

239. Hulbert H. Warner v. The New York Central and Hudson River Railroad Company et al.

(Decided May 21, 1890.)

Ordered, That complaint is sustained as to the classification of patent medicines in carloads at the time the complaint was filed, but that it is not sustained as to the classification in force at the date of this order.

Under the classification in force at date of complaint patent medicines were first class in less than carloads and second class in carloads. When the order was issued the classification for carload lots had been reduced to third class. The present classification on patent medicines is the same: Less than carloads, first class; carloads, third class.

256. In re Alleged Excessive Freight Rates on Food Products.

(Decided June 7, 1890. Supplemental decision July 19, 1890.)

The Chicago and Northwestern Railway Company and other respondents ordered to cease and desist from charging more than 17 cents per 100 pounds of

corn or oats and 20 cents per 100 pounds of wheat or flour in carload lots from Kansas City or St. Joseph, Mo., Pacific Junction, Council Bluffs, California Junction, or Sioux City, Iowa, to Chicago, Ill.; and to also cease and desist from charging more per 100 pounds than 12 cents on corn or oats and 14 cents per 100 pounds of wheat or flour in carload lots from Kansas City or St. Joseph, Mo., to East St. Louis, East Hannibal, Quincy, or Niota, Ill.; and to also cease and desist from charging more per 100 pounds than 12 cents on corn or oats and 14 cents per 100 pounds of wheat or flour in carload lots from Pacific Junction and Council Bluffs, Iowa, to Rock Island, East Burlington (Carthage Junction), East Clinton, or Savanna, Ill., or from California Junction or Sioux City, Iowa, to East Clinton, Savanna, or East Dubuque, Ill.; and to also cease and desist from charging more than 18 cents per 100 pounds of corn or oats or 21 cents per 100 pounds of wheat or flour in carload lots from Armstrong, Kans., Lincoln or Fremont, Nebr., or other points in the States of Kansas and Nebraska to Chicago, Ill., from which points to Chicago the rates are now 20 cents on corn; and to also cease and desist from charging more than 19 cents per 100 pounds of corn or oats or 22 cents per 100 pounds of wheat or flour from Olathe, Kans., or David City, Nebr., or other points in the States of Kansas and Nebraska to Chicago, Ill., from which points to Chicago the rates are now 20½ or 21 cents on corn; and to also cease and desist from charging more than 20 cents per 100 pounds of corn or oats or 23 cents per 100 pounds of wheat or flour in carload lots from Topeka, Kans., or Columbus, Nebr., or other points in the States of Kansas and Nebraska to Chicago, Ill., from which points to Chicago the rates are now 21½ cents or 22 cents on corn; and to also cease and desist from charging more than 21 cents per 100 pounds of corn or oats or 25 cents per 100 pounds of wheat or flour in carload lots from Emporia, Kans., or Central City, Nebr., or other points in the States of Kansas and Nebraska to Chicago, Ill., from which points to Chicago the rates are now 22½ cents or 23 cents on corn; and to also cease and desist from charging more than 22 cents per 100 pounds of corn or oats or 26 cents per 100 pounds of wheat or flour in carload lots from Florence, Kans., or St. Paul, Nebr., or other points in the States of Kansas and Nebraska to Chicago, Ill., from which points to Chicago the rates are now 23½ or 23 cents on corn; and to also cease and desist from charging more than 23 cents per 100 pounds of corn or oats or 27 cents per 100 pounds of wheat or flour in carload lots from Wellington, Kans., and Scotia, Nebr., or other points in the States of Kansas and Nebraska, to Chicago, Ill., from which points to Chicago the rates are now 24½ or 25 cents on corn; and to also cease and desist from charging more than 13 cents per 100 pounds of corn or oats or 15 cents per 100 pounds of wheat or flour in carload lots from Fremont or Lincoln, or other ponits in the State of Nebraska, to the Mississippi River, east side, at Savanna, East Clinton, East Burlington (Carthage Junction), or Rock Island, Ill., from which Nebraska points to said east side Mississippi River points the rates are now 15 cents on corn; and to also cease and desist from charging more that 14 cents per 100 pounds of corn or oats or 17 cents per 100 pounds of wheat or flour in carload lots from David City, or other points in the State of Nebraska, to the Mississippi River, east side, East Clinton, East Burlington (Carthage Junction), or Rock Island, Ill., from which Nebraska points to said east side Mississippi River points the rates are now 15½ or 16 cents on corn; and to also cease and desist from charging more than 15 cents per 100 pounds of corn or oats or 18 cents per 100 pounds of wheat or flour in carload lots from Columbus, or other points in Nebraska, to the Mississippi River, east side, at Savanna, East Clinton, East Burlington (Carthage Junction), or Rock Island, Ill., from which Nebraska points to said east side Mississippi River points the rates are now 16½ or 17 cents on corn; and to also cease and desist from charging more than 16 cents per 100 pounds of corn or oats or 19 cents per 100 pounds of wheat or flour in carload lots from Central City, or other points in Nebraska, to the Mississippi River, east side, at Savanna, East Clinton, East Burlington (Carthage Junction), or Rock Island, Ill., from which Nebraska points to said east side Mississippi River points the rates are now 17½ or 18 cents on corn; and to also cease and desist from charging more than 17 cents per 100 pounds of corn or oats or 20 cents per 100 pounds of wheat or flour in carload lots from St. Paul, or other points in Nebraska, to the Mississippi River, east side, at Savanna, East Clinton, East Burlington (Carthage Junction), or Rock Island, Ill., from which Nebraska points the rates are now 18½ cents or 19

cents on corn; and to also cease and desist from charging more than 18 cents per 100 pounds of corn or oats or 21 cents per 100 pounds of wheat or flour in carload lots from Scotia, or other points in Nebraska, to the Mississippi River, east side, at Savanna, East Clinton, East Burlington (Carthage Junction), or Rock Island, Ill., from which Nebraska points to the said east side Mississippi River points the rates are now 19½ or 20 cents on corn; and to also cease and desist from charging more than 13 cents per 100 pounds of corn or oats or 15 cents per 100 pounds of wheat or flour in carload lots from Armstrong or other points in Kansas to St. Louis, Mo., East St. Louis, East Hannibal, Quincy, or Niota, Ill., from which Kansas points to the said Mississippi River points the rates are now 15 cents on corn; and to also cease and desist from charging more than 14 cents per 100 pounds of corn or oats or 17 cents per 100 pounds of wheat or flour in carload lots from Olathe or other points in Kansas to St. Louis, Mo., East St. Louis, East Hannibal, Quincy, or Niota, Ill., from which Kansas points to said Mississippi River points the rates are now 15½ or 16 cents on corn; and to also cease and desist from charging more than 15 cents per 100 pounds on corn or oats or 18 cents per 100 pounds on wheat or flour in carload lots from Topeka or other points in Kansas to St. Louis, Mo., East St. Louis, East Hannibal, Quincy, or Niota, Ill., from which Kansas points to said Mississippi River points the rates are now 16½ or 17 cents on corn; and to also cease and desist from charging more than 16 cents per 100 pounds of corn or oats or 19 cents per 100 pounds of wheat or flour in carload lots from Emporia or other points in Kansas to St. Louis, Mo., East St. Louis, East Hannibal, Quincy, or Niota, Ill., from which Kansas points to said Mississippi River points the rates are now 17½ or 18 cents on corn; and to also cease and desist from charging more than 17 cents per 100 pounds of corn or oats or 20 cents per 100 pounds of wheat or flour in carload lots from Florence or other points in the State of Kansas to St. Louis, Mo., and East St. Louis, East Hannibal, Quincy, or Niota, Ill., from which Kansas points to said Mississippi River points the rates are now 18½ or 19 cents on corn; and to also cease and desist from charging more than 18 cents per 100 pounds of corn or oats or 21 cents per 100 pounds of wheat or flour in carload lots from Wellington or other points in Kansas to St. Louis, Mo., and East St. Louis, East Hannibal, or Niota, Ill., from which Kansas points to said Mississippi River points the rates are 19½ or 20 cents on corn. Said order not to apply to rates from stations more distant from the Missouri River than 200 miles in Nebraska or 250 miles in Kansas. Where the reduction results in a fractional rate, even cents may be charged. No rate is required to be reduced below 6½ mills per ton per mile for distances not more than 500 miles, nor below 6 mills per ton per mile for any distance, such distances to be estimated by the most direct route between points from and to which the freight is shipped.

Order of the Commission partially complied with on October 1, 1890.

Some of the rates herein involved, and the changes made in such rates since the order was issued, are as follows:

Published rates per 100 pounds from Missouri River points to East St. Louis, as filed with the Commission.

	Wheat.	Corn and oats.	Flour.
At time of the investigation and date of order	17½	15	17½
Maximum rates ordered	14	12	14
Oct. 1, 1890	15	12	15
Jan. 15, 1891	18	[a] 15 [b] 14	18
May 10, 1893	19	15	19
July 26, 1896	11	9	11
Aug. 1, 1896	12	10	12
Nov. 2, 1896	14	10	14

[a] Corn. [b] Oats.

Published rates per 100 pounds from Missouri River points to Chicago, as filed with the Commission.

	Wheat.	Corn and oats.	Flour.
At time of investigation	22½	20	22½
Maximum rates ordered	20	17	20
Oct. 1, 1890	20	17	20
Jan. 15, 1891	23	[a] 20 / [b] 19	23
May 10, 1893	24	20	24
July 26, 1896	16	14	16
Aug. 1, 1896	17	15	17
Nov. 2, 1896	19	15	19

[a] Corn. [b] Oats.

235. PROCTOR & GAMBLE v. THE CINCINNATI, HAMILTON AND DAYTON RAILROAD COMPANY ET AL.

236. PROCTOR & GAMBLE v. THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY ET AL.

237. PROCTOR & GAMBLE v. ORLAND SMITH AND H. C. YERGASON, RECEIVERS OF THE CINCINNATI, WASHINGTON AND BALTIMORE RAILROAD COMPANY ET AL.

(Decided July 17, 1890.)

Defendants ordered to cease and desist from charging more on common or laundry soap in carload lots, and the package containing such soap, than is contemporaneously charged by them for articles enumerated in class 6 of the classification of freight articles in force over their respective lines.

Common soap in carloads was in the fifth class at the time of complaint and when the order was issued.

Order complied with.

199. THE SAN BERNARDINO BOARD OF TRADE v. THE ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY ET AL.

(Decided July 19, 1890.)

On carload shipments from Kansas City or St. Louis, Mo.; Chicago, Ill.; Detroit, Mich.; Cincinnati, Ohio; New York, N. Y., or corresponding points, of reapers; mowers; harvesters; hay presses; plows; horse rakes; seed drills; corn planters; forks (hay or manure); hoes; hand rakes; shovels and spades; bags; burlap and gunny, compressed, in bales; beer, in glass or stone, packed; bottles, wine or beer, in bulk; coffee, in sacks; crockery, common china and white ware, packed; chairs, common, wooden-seated, cane-seated, perforated, worth not more than $9 a dozen; school furniture; iron, bar or rod; jars, fruit and jelly glasses; pumps, steam or hydraulic; sewing machines; soap, castile, imitation castile, common balls, and laundry; stoves; ranges; registers; radiators; black-iron stove furniture; hollow ware; sugar; buggies and carriages, and farm wagons, without springs, defendants were ordered to cease and desist from charging any greater aggregate compensation for the transportation of said commodities over their several lines or routes for the shorter distance to San Bernardino, Cal., than for the longer distance over the same line, in the same direction, to Los Angeles, Cal.

(See decision of United States circuit court, southern district of California, refusing to enforce the order, 50 Fed. Rep., 295.)

119. RICE, ROBINSON & WITHEROP v. THE WESTERN NEW YORK AND PENNSYLVANIA RAILROAD COMPANY.

(Decided September 5, 1890.)

Defendant ordered to cease and desist from charging any greater rate per 100 pounds for the transportation of refined petroleum oil in barrels in carload lots, exclusive of the weight of the barrels, from Titusville, Pa., to Buffalo, N. Y., than is contemporaneously charged by it for the transportation of refined petro-

leum oil in tanks from and to said points; and said defendant is also directed to equalize said rates by reducing its present rate on refined petroleum oil in barrels in carloads to its present rate on said commodity in tanks, and to charge on shipments of said oil in barrels in carloads only for the weight of the quantity of oil carried, exclusive of the weight of the barrels, and by charging the same rate on distillate as on refined oil.

Defendant further ordered to cease and desist from allowing or giving a rebate or reduction of a specified number of gallons from the quantity of oil carried in tanks; that is to say, from the actual or shell capacity of tank cars employed on its lines in the transportation of petroleum oil and the products thereof, while no allowance corresponding to said rebate or reduction is contemporaneously given to shippers of said oil or its products in barrels. Defendant further ordered to cease and desist from charging more per hundred pounds for the transportation of petroleum oil and its products from Titusville to Buffalo over its line via Brocton than it contemporaneously charges for transporting said commodities from and to like or corresponding points over its line via Olean. Defendant further ordered to adjust its rates and charges for the transportation of petroleum oil and its products, so that said rates and charges shall be the same for corresponding distances over its lines and the branches thereof.

November 30, 1888, report and opinion filed.

April 15, 1889, case reopened.

September 5, 1890, supplemental report and opinion filed and order entered.

Order complied with.

175. BOARD OF TRADE OF THE CITY OF CHICAGO V. CHICAGO AND ALTON RAILROAD COMPANY ET AL.

(Decided October 16, 1890.)

Modified order entered November 3, 1890, requiring defendants to cease and desist from the unjust discrimination now made by them in rates on live hogs and packing-house products in carloads from Missouri River points and interior points in Iowa and Missouri to Chicago, Ill.; and to adjust their tariffs of rates on live hogs and packing-house products, so that rates for the transportation over their respective lines of live hogs and packing-house products in carloads from said Missouri River points or from intermediate points in Iowa or Missouri to Chicago shall not be greater on live hogs than on packing-house products from said points of shipment respectively to said point of destination.

Order complied with.

244. THE HARVARD COMPANY V. THE PENNSYLVANIA COMPANY ET AL.

(Decided October 23, 1890.)

Defendants ordered to cease and desist from charging more for the transportation of surgical chairs, partly knocked down, carted and shipped at owner's risk in less than carloads from Canton, Ohio, to Boston, Mass., than the rate charged by them on articles enumerated as first class in the classification in force over their respective lines, said rate now being 63 cents per 100 pounds, nor more than one and one-half times said rate on surgical chairs so crated, when shipped from and to the same points at carrier's risk, said rate now being 94 cents per 100 pounds. Said defendants also required to so classify surgical chairs in the territory reached by their respective lines and make rates proportionately lower or higher on said chairs when they are transported for distances shorter or longer than from Canton to Boston.

The classification during the pendency of the controversy for surgical chairs, partly knocked down, crated and shipped at owner's risk, on less than carloads, was double first class.

Order complied with.

257. KAUFFMAN MILLING COMPANY V. MISSOURI PACIFIC RAILWAY COMPANY ET AL.

(Decided November 30, 1890.)

Ordered, That complaint be held not sustained as to the difference of 5 cents per 100 pounds now existing between the rates on wheat and wheat flour from

oints in Missouri and Kansas to points in Texas, but that the complaint is susained as to the difference between said rates exceeding 5 cents per 100 pounds, nd defendants required to abstain from charging any greater rate for the transortation of wheat flour than a sum which is 5 cents per 100 pounds higher than he rate contemporaneously charged for the transportation of wheat between the ame points.

While the differential of 5 cents existed at the time of complaint and at the ate of the order, it appeared that the difference between the rates on wheat nd flour was often made much greater by temporary reductions in rates on heat.

No disobedience reported.

48. New York Board of Trade and Transportation v. The Pennsylvania Railroad Company.

(Decided January 29, 1891.)

The Texas and Pacific Railway Company and other defendants ordered to ease and desist from carrying any article of import traffic shipped from any oreign port through any port of entry in the United States or any port of entry n a foreign country adjacent to the United States upon through bills of lading nd destined to any place within the United States upon any other than the ublished inland tariff covering the transportation of other freight of like kind ver their respective lines from such port of entry to such place of destination r at any other than the same rates established in said published inland tariff or the carriage of the like kind of traffic in the elements of bulk, weight, value, nd the expense of carriage.

(See decision of United States Supreme Court refusing to enforce this order, 62 U. S., 197.)

150. Coxe Bros. & Co. v. The Lehigh Valley Railroad Company.

(Decided March 13, 1891.)

Defendant ordered to cease and desist from charging more for the transportaion of divers known kinds and sizes of anthracite coal delivered to it by comlainants and other shippers for carriage from shipping points on its line of ailroad at or near the coal mines and collieries of complainants in the mining ocality known as the Lehigh anthracite coal region, to wit, from Drifton, Eckley, Gowen, Tomhicken, Derringer, and Stockton, all in the county of uzerne and State of Pennsylvania, and Beaver Meadow, in the county of Carbon, in the State of Pennsylvania, to Perth Amboy, in the State of New Jersey, han the following rates per ton of 2,240 pounds, that is to say, $1.50 per said on on the sizes and kinds known as larger or prepared sizes, and also more pecifically known as lump, steamboat, broken, egg, stove, and nut coal; $1.25 er said ton on the size or kind known as pea coal; $1.05 per said ton on the ize or kind known as buckwheat coal; $1.05 per said ton on the size or kind nown as culm coal.

(See decision of United States circuit court, eastern district of Pennsylvania, n Interstate Commerce Commission *v.* L. V. R. R. Co., refusing to enforce order. ase pending in circuit court of appeals.)

Anthracite coal rates over Lehigh Valley Railroad from Lehigh and Mahanoy coal regions in Pennsylvania to Perth Amboy, N. J.

[In cents per gross ton.]

Anthracite coal.	Date of complaint.	Date of order.	Rates ordered.	Present rates.
repared sizes	180	170	150	155
ea	140	140	125	140
uckwheat	140	120	105	120
ulm	120	120	105	120

264. Hamilton & Brown v. The Chattanooga, Rome and Columbus Railroad Company et al.

(Decided March 19, 1891.)

Defendants ordered to readjust their rates for the transportation of the various classes of freight over through routes formed by the connection of two or more of their respective lines or by the connection of any or all of their respective lines with lines of carriers not parties to this proceeding from Louisville, Ky.; Nashville, Tenn.; New York, N. Y.; Boston, Mass.; Providence, R. I., or other Northern points of shipment to Kramer, otherwise called Bremen, Ga., and make the same lawful prior to April 20, 1891, in accordance with principles laid down in the report and opinion of the Commission herein, and make report thereof to the Commission on or before said date.

Further ordered, that in case the readjustment and reduction of rates hereby ordered is prevented by the neglect or refusal of carriers not parties to the proceeding who participate in the carriage of freight from any of the said points of shipment to Kramer, otherwise called Bremen, to voluntarily agree thereto an order shall thereupon issue directing said carriers to appear before the Commission on a day to be therein named and show cause why such reduction should not be made.

The complaint was directed against defendants' practice of making through rates to Kramer by referring to established through rates to so-called basing points and adding thereto the local rates from such basing points to Kramer, taking that combination which would yield the lowest rate, although the basing point used might be farther distant than Kramer from the point of shipment.

Order complied with.

263. Boston Fruit and Produce Exchange v. The New York and New England Railroad Company et al.

(Decided March 19, 1891.)

The defendants, the Pennsylvania Railroad Company, the New York, New Haven and Hartford Railroad Company, and the New York and New England Railroad Company, ordered to cease and desist from charging for services rendered (including special-train and other services set forth and described in the report and opinion of the Commission) in the transportation of peaches in carloads from Wyoming, Del., to Boston, Mass., and points termed Boston points, any greater compensation, including ferry charges, than $14 per net ton loaded in cars rated at 15 tons capacity, and a proportionate charge in addition for weight loaded in excess thereof; or $16 per net ton loaded in cars rated at 12 tons capacity, and a proportionate charge in addition for weight loaded in excess thereof; or $18 per net ton loaded in cars rated at 9 tons capacity, and a proportionate charge in addition for weight loaded in excess thereof.

Further ordered, That all of the defendants cease and desist from charging for such services in the transportation of peaches in carloads over the respective through lines formed by their respective railroads and ferry connections from any point of shipment in the peach-growing districts of Maryland, Delaware, and New Jersey other than Wyoming, aforesaid, to Boston and Boston points, any greater aggregate compensation, including ferry charges, than is proportioned to the carload charges above specified, according to the respective distances of said points of shipment and Wyoming from Boston; but it is expressly provided that on carload shipments of peaches from points in said peach-growing districts of Maryland and Delaware which are farther from Boston than Wyoming the increase of said carload charges shall in no case be greater than the increase specified for those stations in the tariffs of rates on peaches in carloads put into effect by the defendant, the Pennsylvania Railroad Company, on July 15, 1889.

The complaint was directed against a charge of $220 per car on peaches from Wyoming, Del., to Boston, Mass., and rates adjusted thereto from all points beyond Wyoming. During the pendency of the proceeding the defendants made a reduction of $30 on cars of 9 tons capacity, making the rate for such a car $190, but leaving the rate at $220 per car of 12 tons.

Order partially complied with.

Present rates are:

9-ton car	$171
12-ton car	208
15-ton car	245

183. NEW ORLEANS COTTON EXCHANGE v. THE LOUISVILLE, NEW ORLEANS AND TEXAS RAILWAY COMPANY.

(Decided March 28, 1891.)

Defendant ordered to forthwith post and keep posted in its terminal stations at New Orleans, La., in convenient form for public inspection, the rates and charges in force on its line of railroad between its said terminal stations at New Orleans and stations in the States of Tennessee and Mississippi, as well on freight for export as on that which is not.

No disobedience reported.

102. DELAWARE STATE GRANGE OF THE PATRONS OF HUSBANDRY v. THE NEW YORK, PHILADELPHIA AND NORFOLK RAILROAD COMPANY ET AL.

(Decided April 13, 1891.)

Defendants ordered to cease and desist from charging more for the transportation of commodities hereinafter mentioned to Philadelphia, Pa., and Jersey City, N. J., from points on the main line formed by railroads respectively owned, controlled, or operated by the defendants from Cape Charles, Va., through said State northerly to the Maryland line, and through the States of Maryland and Delaware to Wilmington, Del., and from points on branch lines connecting with said main line, than is specified, as follows, to wit: On peaches and berries from all stations on the said main line, 80 per cent of rates thereon established and in force from said stations during the shipping season of the year 1890; on apples, peas, kale, spinach, radishes, cabbages, lettuce, and other vegetables, except potatoes, from Delmar and all stations on said main line north of Delmar, 75 per cent of rates thereon established and in force from said stations during the shipping season of the year 1890; on apples, peas, and other vegetables, except potatoes, kale, spinach, radishes, cabbages, and lettuce, from all stations on said main line south of Delmar, 75 per cent of rates thereon established and in force from said stations during the shipping season of the year 1890; on potatoes from all stations on said main line, 75 per cent of rates thereon established and in force during the year 1890. And rates on either of said commodities from stations on said branch lines are not to be more than 10 per cent higher than rates established in compliance with this order from junction points of said branch roads with the main line. Case retained for further investigation as to alleged unlawful discrimination from existing lower rates on like kind of traffic with those above mentioned for the longer distance over the same line from Norfolk, Va., to New York, Philadelphia, and Jersey City.

(See decision of United States circuit court refusing to enforce a portion of this order. Case tried in eastern district of Virginia.)

159. J. P. SQUIRE & CO. v. THE MICHIGAN CENTRAL RAILROAD COMPANY ET AL.

(Decided April 21, 1891.)

Defendants ordered to determine and establish relatively reasonable rates for the transportation over their lines of live hogs, live cattle, and the dressed products of each, by ascertaining the respective costs of service for such transportation with reasonable accuracy, as provided in the report and opinion herein, and adjusting said rates so that they will be proportioned to each other according to such respective costs of service.

No disobedience reported.

266. JACOB SHAMBERG v. DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY ET AL.

(Decided April 25, 1891.)

Defendants ordered to cease and desist from charging any greater aggregate compensation for the transportation of live stock in carloads shipped by or for

complainant or other persons over the through line formed by their respective railroads from Chicago, Ill., to Hoboken, N. J., and New York, N. Y., than they actually charge and receive for like and contemporaneous service in the transportation of live stock in carloads between the same points on said through line for the firm of Schwarzchild & Sulzberger, or persons by or for whom live stock is consigned to said firm; and also from making or giving any undue or unreasonable preference or advantage to said firm of Schwarzchild & Sulzberger or their successors in interest or to persons by or for whom live stock is consigned to said firm in the transportation of live stock as aforesaid, and from subjecting complainant and other persons to undue or unreasonable prejudice or disadvantage in the transportation of live stock as aforesaid by paying to the Lackawanna Live Stock Express Company or its successors in interest or to parties controlling its affairs for rent or hire of live-stock cars furnished to said defendants by said express company for use in the transportation of live stock over their lines any gross sum of money or specified rate of mileage exceeding such gross sum or rate as will not only be a fair rental or price for the use thereof as between said defendants and the owners of said cars, but will not directly or indirectly as a whole or in part operate as a rebate from any rate or charge in force over said through line on live stock carried thereon; or by paying a yardage charge or any sum of money whatsoever to said firm of Schwarzchild & Sulzberger or their successors in interest for the use of its live-stock yards and docks in delivering live stock transported over their lines to said firm of Schwarzchild & Sulzberger or their successors in interest as consignees or as agents of consignees; or by refusing to impartially furnish said live-stock cars in fair proportion to all shippers who may apply therefor.

In a suit involving contracts between defendants and the Lackawanna Live Stock Express, decision was rendered by United States circuit court for southern district of New York upholding the agreements and restraining complainant Shamberg from taking action or in any way interfering with the operation of said contracts. Decision apparently not reported. Commission was not a party to the case. No request has been made to it for enforcement of the order.

268. New York and Northern Railway Company v. The New York and New England Railroad Company.

(Decided May 6, 1891.)

The defendant, the New York and New England Railroad Company, ordered to cease and desist from discriminating against the petitioner by refusing to make such arrangements with or afford such facilities to the petitioner for the interchange at the point or place of connection of their respective lines at Brewsters, N. Y., of interstate traffic originating at or destined to the petitioner's depot or station in the city of New York, at pier 40, East River, and for the receiving, forwarding, and delivering of such traffic as are reasonable and proper and equal to arrangements made or facilities afforded by it for the interchange between its own line and lines connecting therewith which are owned, controlled, or operated by the defendant, the Housatonic Railroad Company, of interstate traffic originating at or destined to the depot or station of the defendant, the New England Terminal Company, in the city of New York, at piers 45 and 46, East River, and for the receiving, forwarding, and delivering of such traffic; and also from discriminating between the lines of petitioner and said defendants, the Housatonic Railroad Company and the New England Terminal Company, in respect to rates and charges upon any traffic interchanged as aforesaid.

(See decision of United States circuit court in same entitled case, 50 Fed. Rep., 867, enforcing this order.)

272. Beaver & Co. v. Pittsburg, Cincinnati and St. Louis Railway Company et al.

(Decided May 16, 1891.)

Defendants ordered to revise the classification of freight articles in force over their several lines in respect to the article of soap, and put the soap manufactured and sold by petitioners as "Grand Pa's Wonder soap" in the same class as the soap called and known and in the report and opinion of the Commission described as "Ivory soap," and to charge the same rate for like service in the transportation of said soaps over their several lines.

When complaint was filed and at the date of the order, the "Wonder soap," less than carloads, was in second class with toilet soap, while Ivory soap was in fourth class with laundry soap.

Order complied with.

245. THE JAMES & MAYER BUGGY COMPANY v. THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY ET AL.

(Decided June 29, 1891.)

Defendants ordered to cease and desist from charging or receiving any greater aggregate compensation for the transportation in less than carloads of buggies, carriages, and other articles classified by them as freight of the first class for the shorter distance over the line formed by their several railroads from Cincinnati, Ohio, to Social Circle, Ga., than they charge or receive for the transportation of said articles in less than carloads for the longer distance over the same line from Cincinnati to Augusta, Ga.; and that the defendants, the Cincinnati, New Orleans and Texas Pacific Railway Company and the Western and Atlantic Railroad Company, do also cease and desist from charging more for the transportation of buggies, carriages, and said other first-class articles in less than carloads from Cincinnati to Atlanta, Ga., than $1 per 100 pounds.

Rates at time of complaint and when order was issued were $1.37 to Social Circle and $1.07 to Augusta and Atlanta.

(See decision of United States Supreme Court, 162 U. S., 184, enforcing the first part of this order.)

282. RAILROAD COMMISSION OF FLORIDA v. THE SAVANNAH, FLORIDA AND WESTERN RAILWAY COMPANY ET AL.

(Decided October 29, 1891.)

Defendants ordered to cease and desist from charging any greater aggregate compensation for the transportation wholly by railroad, or partly by railroad and partly by water, of oranges and lemons shipped from Jacksonville, Callahan, Gainesville, Lake City, Live Oak, or Fernandina, Fla., called and known as base points, or from other points of shipment in the State of Florida, to Baltimore, Md.; Philadelphia, Pa.; New York, N. Y., or other northeastern cities, than is found and obtained by adding 5 cents per box of 80 pounds or 6¼ cents per 100 pounds to through rates per said box or 100 pounds lawfully charged by them immediately prior to the 23d day of November, 1890, as aggregate compensation for the transportation of shipments of said commodities between the points aforesaid.

Defendants also required to make reparation for injuries occasioned by unreasonable and unlawful rates for the transportation of oranges and lemons as aforesaid, by refunding to the several persons entitled thereto, within sixty days after demand therefor, all sums received by them for the transportation of oranges and lemons as aforesaid in excess of 5 cents per box of 80 pounds or 6¼ cents per 100 pounds to through rates per said box or 100 pounds lawfully in force for such transportation over their respective lines immediately prior to November 23, 1890; and as the persons who have paid such unreasonable and unlawful charges are not parties to this proceeding, and the amounts wrongfully received from them respectively can not be ascertained from the evidence heretofore taken herein, that this proceeding be continued for such further action or inquiry in that behalf as may become necessary.

Complaint was made of an advance in rates on oranges of 10 cents a box. This advanced rate was still in effect at the date of the order.

(See decision of United States circuit court of appeals (4 Int. Com. Rep., 589) in Florida Fruit Exchange *v.* S. F. & W. Rwy. et al., affirming decree of United States circuit court enforcing this order. Case pending in Supreme Court.)

204. LEHMAN, HIGGINSON & CO. v. THE TEXAS AND PACIFIC RAILWAY COMPANY ET AL.

(Decided November 30, 1891.)

Defendants ordered to cease and desist from charging any greater aggregate compensation on sugar in carloads from New Orleans, La., to Humboldt, Kans.,

than 36 cents per 100 pounds, and to make reparation to complainants for unjust and unreasonable charges at the rate of 42 cents per 100 pounds for the transportation of three carloads of sugar from New Orleans to Humboldt by refunding to them $65.62 collected for such transportation in excess of reasonable charges at the rate of 36 cents per 100 pounds.

Complied with to the extent of establishing the rate of 36 cents per 100 pounds on sugar.

197. The Hezel Milling Company v. The St. Louis, Alton and Terre Haute Railroad Company and the Illinois Central Railroad Company.

(Decided December 15, 1891.)

Ordered, That so long as the defendants, the St. Louis, Alton and Terre Haute Railroad Company and the Illinois Central Railroad Company, or either of them, maintain the existing practice of bearing a portion of the expense of transferring flour from the mills or places of business of shippers in St. Louis, in the State of Missouri, to the receiving station of said defendant, the St. Louis, Alton and Terre Haute Railroad Company, in East St. Louis, in the State of Illinois, for transportation over their lines of railroad, said defendants are hereby directed and required to allow to the Hezel Milling Company, the petitioner herein, a reduction of 6 cents per barrel from rates which are or may be established for transporting flour from East St. Louis over their lines of railroad on all shipments of flour destined to points outside of the State of Illinois, which said defendant, the St. Louis, Alton and Terre Haute Railroad Company, may require the petitioner to convey from its mills in East St. Louis aforesaid to said defendant's receiving station in East St. Louis aforesaid, or which the petitioner may be compelled to convey from its said mill to said receiving station by reason of properly cleaned and repaired cars not being furnished upon reasonable notice from petitioner, by or through said defendant on its side track contiguous to petitioner's said mill for loading such shipments of flour therein and delivery thereof on said side track to said defendant for transportation, which said reduction of 6 cents per barrel is substantially equal in amount to the portion of said expense of transfer borne by said defendants when shipments of such flour originate in St. Louis aforesaid; but if, upon such reasonable notice to said defendant, cars are furnished to petitioner upon said side track which are properly cleaned and in sufficient repair for use by petitioner in loading and delivering such shipments of flour as aforesaid and for the transportation of such shipments of flour by the defendants, then they, the said defendants, may charge and receive the same rates on such shipments of flour as may be established and in force over their lines for the transportation of that commodity from East St. Louis aforesaid, although a portion of the cost of transfer by railroad or wagon of flour from shippers' mills or places of business in East St. Louis aforesaid to said receiving station in East St. Louis aforesaid is included in such rates when charged by defendants for the transportation of flour originating in St. Louis aforesaid, and they may also require petitioner when cars are so furnished on said side track to load such shipments of flour therein consecutively, according to the distance of the destinations thereof.

Order complied with.

308. In the Matter of the Carriage of Persons Free or at Reduced Rates by The Boston and Maine Railroad Company.

(Decided December 29, 1891.)

Defendant ordered to cease and desist from charging or receiving from any person or persons a greater or less compensation for the transportation of passengers between points in different States than it charges or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of passengers under substantially similar circumstances and conditions by issuing without charge to persons not included within the classes of persons described in section 22 of the act to regulate commerce tickets or passes entitling them to transportation as passengers over its line of railroad between points in different States or by transporting such persons or others not included in the aforesaid classes described in said section 22 over its line of railroad as passengers between points in different States without the payment by them of any rate or fare, or upon the payment of a reduced rate,

charge, or fare; and in carrying out the provisions of this order said defendant is further hereby directed and required to be governed by the requirements and construction of law laid down in the report and opinion of the Commission herein. Further ordered that this matter be retained for further investigation and consideration of such questions involved as have not been determined by the Commission in said report and opinion.

No disobedience reported.

284. J. M. RISING ET AL. v. THE SAVANNAH, FLORIDA AND WESTERN RAILWAY COMPANY.

(Decided January 28, 1892.)

Defendants ordered to cease and desist from charging any greater aggregate compensation for the transportation, as described in the findings of fact herein, of strawberries from Callahan, Fla., to New York, N. Y., than $3.33 per 100 pounds or $1.66½ per crate of 50 pounds; and from charging any greater aggregate compensation for such transportation of strawberries from Callahan to northern destinations other than New York, N. Y., than reasonable charges, lawfully adjusted to the reasonable rate which said defendant will, as above required, establish and put in effect over their lines for such transportation of strawberries from Callahan to New York.

Rate in force at time of complaint and date of order, $2.01 per crate.

No published rate from Callahan to New York. The present rate on strawberries in refrigerator cars on own wheels to be furnished by shipper, cost of icing at shipper's expense, from Jacksonville proper to Jersey City and New York, is $1.77 per 32-quart crate.

No request for enforcement of above order has been made. (See next case.)

283. CHARLES P. PERRY v. THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANYY ET AL.

(Decided January 28, 1892.)

Defendants ordered to cease and desist from charging any greater aggregate compensation for the transportation, as described in the report and opinion herein, of strawberries from Lawtey, Hammock Ridge, and other points on the line of the Florida Central and Peninsular Railroad southerly of Callahan, Fla., to New York, N. Y., than such compensation for said transportation from each of said points of shipment as will be found and obtained by adding a reasonable and just sum per 100 pounds or crate of 50 pounds to a rate of charge from Callahan aforesaid to New York, N. Y., of not exceeding $3.33 per 100 pounds or $1.66½ per crate of 50 pounds; and that defendants do also cease and desist from charging more for such transportation of strawberries to New York, N. Y., for the shorter distance from Lawtey aforesaid than for the longer distance over the same line in the same direction from Gainesville, Fla., and from charging or receiving more for such transportation of strawberries under substantially similar circumstances and conditions to New York, N. Y., for shorter distances from other points southerly from Callahan aforesaid than for longer distances over the same line in the same direction. Said defendants also required to publish and file with the Commission, in the manner required by law, schedules showing rates established and charged by them for services rendered or to be rendered in the transportation of strawberries from Lawtey, Hammock Ridge, and other so-called "local points" southerly of Callahan, Fla., to points outside of the State of Florida.

During the controversy the rate from Lawtey (Hammock Ridge also) was about $2.51 per crate.

Present rates: From Yalee or Jacksonville, on shipments from beyond, per crate of 50 pounds, $1.66 to New York.

Lawtey, Hammock Ridge, and Gainesville, per crate 50 pounds, $1.83½.

293. MURPHY, WASEY & CO. v. THE WABASH RAILROAD COMPANY ET AL.

(Decided January 30, 1892.)

Defendants ordered to cease and desist from charging any greater aggregate compensation for the transportation from Detroit, Mich., to Omaha, Nebr., of

mixed carloads of complainants' chair stuff, spring bed and mattress material, all wooden, of a minimum weight of 25,000 pounds, and fully described in the report and opinion of the Commission herein, than will be found and obtained by adding to the existing rate of 10 cents per 100 pounds thereof for the transportation from Detroit to Chicago, Ill., a rate of not exceeding 20 cents per 100 pounds thereof for the transportation from Chicago to Omaha; or when such transportation is not through Chicago, by adding to the existing rate of 16½ cents per 100 pounds thereof for the transportation from Detroit to points called and known as Mississippi River points a rate of not exceeding 15 cents per 100 pounds thereof for the transportation from such Mississippi River points to Omaha.

During the controversy the rates from Chicago to Omaha were 30 cents on chair stuff and 20 cents on mattress material.

Order partially complied with.

Present rates are 10 cents Detroit to Chicago and 14 cents Detroit to Mississippi River; 32 cents on chair stock, in the white, knocked down, Chicago to Omaha, and 24½ cents from Mississippi River points to Omaha; 22 cents on cot and mattress-frame material (wood in the white), knocked down, Chicago to Omaha, and 17 cents from Mississippi River points to Omaha.

249. William H. Harvey v. The Louisville and Nashville Railroad Company.

(Decided February 12, 1892.)

Defendant ordered to cease and desist from charging or receiving from any person or persons a greater or less compensation for any service rendered or to be rendered in the transportation of passengers between points in different States than it charges or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of passengers under substantially similar circumstances and conditions, by issuing without charge to persons not included within the classes of persons described in section 22 of the act to regulate commerce tickets or passes entitling them to transportation as passengers over its line of railroad between points in different States, or by transporting such persons or others not included in the aforesaid classes described in section 22 over the said line of railroad as passengers between points in different States without the payment by them of any rate, charge, or fare.

No disobedience reported.

189. Merchants' Union of Spokane Falls v. Northern Pacific Railroad Company et al.

(Decided November 28, 1892.)

Ordered, That defendants may make commodity rates on competitive traffic to their Pacific Coast terminals which are less than their rates on like traffic to Spokane, Wash., but such commodity rates must not be lower than are necessary from time to time to meet such competition, nor be allowed in any case on articles not actually subject thereto; that in the matter of carload rates, mixed carload lots at carload rates, minimum weight of shipment entitled to carload rates, and in all other respects defendants are required to provide and allow the same privileges, facilities, and advantages on shipments to Spokane as are or may be furnished on like shipments to Portland or other Pacific terminals.

Defendants also required to publish and put into effect tariff rates on all classified traffic from their eastern terminals to Spokane, which shall not exceed rates approximately 18 per cent less than the rates on such traffic now in force to Spokane, and shall not materially exceed 82 per cent of class rates now applied, both to Spokane and their Pacific Coast terminals; and also to abstain from charging for such traffic from their eastern terminals to Spokane a greater sum than rates which they shall fix and prescribe in the reduced rates hereby ordered; and that charges per 100 pounds which do not exceed the following-named rates on each of the ten classes will be deemed compliance with this requirement: Class 1, $2.90; class 2, $2.46; class 3, $2.05; class 4, $1.64; class 5, $1.44; class A, $1.44; class B, $1.28; class C, $1.02; class D, 90 cents; class E, 74 cents. In case of any reduction in class rates to Pacific terminals a

further and corresponding reduction is hereby required on like shipments to Spokane, unless such reduction should greatly increase the volume of shipments at classified rates to Pacific terminals, in which case the proper relation between Spokane and terminal rates on such traffic will be further considered and the case will be reopened for further investigation upon the application of either party.

This order applies not only to rates from St. Paul and other eastern terminals of defendants, but it also requires corresponding reduction of group rates described in the report and opinion of the Commission herein from points east of St. Paul and said other terminals so far as they are applied to Spokane traffic.

Class rates to Spokane and Pacific Coast points were the same when complaint was made and when the order was issued.

Defendant claims to be complying with the order, but this is questioned in a proceeding brought by citizens of Spokane against receivers of the Northern Pacific Railroad Company in the circuit court for the district of Washington.

188. TOLEDO PRODUCE EXCHANGE v. THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY ET AL.

251. EDWARD KEMBLE v. THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY ET AL.

(Decided April 6, 1892.)

Defendants and other carriers ordered to show cause by duly verified answer why orders should not be made directing them to cease and desist from charging on all classified freight carried by them, or either of them, from Chicago or points east thereof and west of Buffalo to Boston and New England points an arbitrary sum or differential per 100 pounds above the rate at the time in force on the same class of freight from the same points to the city of New York of 10 cents on first-class freight, 6 cents on second class, and 5 cents on the third, fourth, fifth, and sixth classes, and why such freight rates to Boston and other New England points should not be made by adding to the rates on said classes of freight to New York an increase of 10 per cent of said rates to New York; and if within the time therein named no such answers are filed, then order shall issue fixing said differential rates to Boston and other New England points at 10 per cent increase over rates from the same points of shipment to New York.

Rates were changed so as to be substantially on the percentage basis of 10 per cent above New York rates, instead of arbitrary additions thereto, and further action has not been had.

184. GEORGE RICE v. THE CINCINNATI, WASHINGTON AND BALTIMORE RAILROAD COMPANY ET AL.

185. GEORGE RICE v. THE CINCINNATI, WASHINGTON AND BALTIMORE RAILROAD COMPANY ET AL.

194. GEORGE RICE v. THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY.

(Decided April 9, 1892.)

Defendants ordered to cease and desist from basing charges on refined petroleum oil upon estimated weights of 6.3 pounds per gallon in tank cars and 400 pounds per barrel when shipped in barrels, and henceforth to base charges upon the actual weight of that commodity, except where such actual weights can not be ascertained without great inconvenience, when such a rule of estimating weights shall be adopted as will practically operate to enable shippers of oil in barrels to secure the transportation of an amount or weight of freight equal to that which for the same aggregate sum is carried for any shipper of such oil in tanks.

Defendants also required to cease and desist from allowing on shipments of petroleum in tank cars a deduction of 42 gallons per tank before freight charges are computed, and from making any such allowance or deduction whatever

unless a corresponding and equivalent concession be made upon shipments of such oil in barrels. The defendant, the Louisville and Nashville Railroad Company, ordered to revise and correct its charges upon petroleum and its products to interior and local points on its lines, and to make such reductions and modifications therein as will remove the gross disproportions and inequalities now existing between charges on such commodities over its lines. Cases held open for further investigation on application of either party.

The allowance of 42 gallons on tank-car shipments was discontinued, and the estimated weight of oil was changed to 6.4 pounds per gallon.

240. E. M. Raworth v. The Northern Pacific Railroad Company et al.

(Decided April 13, 1892.)

Defendants ordered to cease and desist from charging or receiving any greater aggregate compensation on shipments of sugar in carloads from San Francisco, Cal., to Fargo, N. Dak., than they or either of them charge or receive for the transportation of sugar in carloads for the longer distance from San Francisco to St. Paul, Minn.

Case pending to enforce order in United States circuit court for district of North Dakota.

301. The Anthony Salt Company v. The St. Louis and San Francisco Railway Company.

303. Samuel Matthews v. The Atchison, Topeka and Santa Fe Railroad Company et al.

(Decided April 23, 1892.)

Defendants ordered to readjust their tariffs on the transportation of salt in carloads over their lines extending southerly and southwesterly from Hutchinson, Kans., and St. Louis, Mo., so that while complying therein with the fourth section of the act, carload shipments of salt in barrels from points in Kansas to points in any territory reached or served by their lines or any of them which lie as near or nearer to Hutchinson than to St. Louis will have in such readjustment of rates the advantages belonging to them on account of equal or less distance from said points of destination as compared with such distance to St. Louis; and defendants are further directed, in making such readjustment, to fix the relation and proportion of rates on such salt to Galveston and other Texas common points from Hutchinson and St. Louis so that the rate to such points from Hutchinson shall not exceed 27 cents per 100 pounds while they charge a rate of 35½ cents per 100 pounds on such salt from St. Louis, and to maintain the relation and proportion of such rates accordingly.

Order complied with.

267. The Eau Claire Board of Trade v. The Chicago, Milwaukee and St. Paul Railway Company et al.

(Decided June 17, 1892.)

The defendant, the Chicago, Milwaukee and St. Paul Railway Company, ordered to cease and desist from charging any greater aggregate compensation on lumber in carloads from Eau Claire, Wis., to Kansas City and St. Joseph, Mo.; Council Bluffs and Sioux City, Iowa; Omaha, Nebr., and other Missouri River points, than 2½ cents per 100 pounds more than shall or may be charged on lumber in carloads from La Crosse, Wis., and Winona, Minn., to the destination points aforesaid.

At the time of complaint and at the date of the order the rates from Eau Claire were 5½ cents higher than from La Crosse and Winona. The defendant adjusted its rates as required by the order, but has since claimed that, through rate changes made by other carriers, its attempt to enforce the relation of rates ordered has been rendered impracticable.

277. W. H. MACLOON v. THE CHICAGO AND NORTHWESTERN RAILWAY COMPANY.

(Decided January 12, 1892.)

The defendant, on account of misunderstanding over demurrage charges arising on previous shipments of coal consigned to complainant, refused to deliver two carloads of coal to a connecting line for switching to his yard, although freight charges were duly tendered, unless he promised in advance to pay any demurrage charges that might be exacted. This was held to be unlawful, and the defendant having thereupon made reparation to the complainant, no order was entered.

316. THE RAILROAD COMMISSION OF GEORGIA v. THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY ET AL.

(Decided November 11, 1892.)

Defendants ordered to cease and desist from charging greater aggregate compensation for the transportation of like kind of property from Cincinnati and other Ohio River points to Jonesboro, Hampton, Griffin, Barnesville, or Forsyth, Ga., than for the longer distance over the same line, in the same direction, to Macon, Ga.

Case pending in the circuit court for southern district of Georgia to enforce order.

315. THE RAILROAD COMMISSION OF GEORGIA v. THE OCEAN STEAMSHIP COMPANY ET AL.

(Decided November 11, 1892.)

Defendants ordered to cease and desist from charging any greater aggregate compensation for the transportation of like kind of property from New York and other North Atlantic ports for the shorter distance to Everitts, Butler, Geneva, or Schatulga, Ga., than for the longer distance over the same line, in the same direction, to Columbus, Ga.; and also to cease and desist from charging greater aggregate compensation on like kind of property from New York and other North Atlantic ports for the shorter distance to Smithville, Dawson, or Cuthbert, Ga., than for the longer distance over the same line, in the same direction, to Georgetown, Ga.

Case pending in United States circuit court for southern district of Georgia to enforce order.

326. THE RAILROAD COMMISSION OF GEORGIA v. THE CLYDE STEAMSHIP COMPANY ET AL.

(Decided November 11, 1892.)

Defendant ordered to cease and desist from charging greater aggregate compensation for the transportation of property from New York and other North Atlantic ports for the shorter distance to Newnan, Grantville, Hogansville, Lagrange, or West Point, Ga., than they charge on like kind of property from New York and other North Atlantic ports for the longer distance over the same line, in the same direction, to Opelika.

Case pending in United States circuit court for northern district of Georgia to enforce order.

317. THE RAILROAD COMMISSION OF GEORGIA v. THE WESTERN AND ATLANTIC RAILROAD COMPANY ET AL.

(Decided November 11, 1892.)

Defendants ordered to cease and desist from charging greater aggregate compensation for the transportation of like kind of property from Cincinnati and other Ohio River points for the shorter distance to Calhoun, Adairsville, Kingston, Cartersville, Acworth, or Marietta, Ga., than for the longer distance over the same line, in the same direction, to Atlanta, Ga.

Case pending in United States circuit court for northern district of Georgia to enforce order.

314. The Railroad Commission of Georgia v. The Clyde Steamship Company et al.

(Decided November 11, 1892.)

Defendants ordered to cease and desist from charging greater aggregate compensation on like kind of property from New York and other North Atlantic ports for the shorter distance to Greensboro, Madison, Social Circle, Covington, Conyers, or Stone Mountain, Ga., than for the longer distance over the same line in the same direction to Atlanta, Ga.

Case pending in United States court for northern district of Georgia to enforce order.

153. The Independent Refiners' Association of Titusville, Pa., and the Independent Refiners' Association of Oil City, Pa., v. The Western New York and Pennsylvania Railroad Company et al.

154. The Independent Refiners' Association of Titusville, Pa., and the Independent Refiners' Association of Oil City, Pa., v. The Western New York and Pennsylvania Railroad Company et al.

163. The Independent Refiners' Association of Titusville, Pa., and the Independent Refiners' Association of Oil City, Pa., v. The Pennsylvania Railroad Company et al.

(Decided November 14, 1892.)

Defendants ordered to base charges for the transportation of refined petroleum oil upon the actual weight of shipments, whether in tanks or barrels, except in cases where actual weights can not be ascertained without great inconvenience, when such a rule or method of estimating weights shall be adopted as will practically operate to secure to any shipper of such oil in barrels the transportation of an amount or weight of freight equal to that which, for the same aggregate sum, they carry between the same points for any shipper of such oil in tanks. Cases held open for such further and more specific direction in regard to such estimated weights as may be necessary.

Defendants also required to abstain from allowing on shipments of petroleum in tank cars a deduction of 42 gallons per tank before freight charges are computed, or any such allowance or deduction whatever unless a corresponding and equivalent concession be made on shipments of such oil in barrels. Defendants further ordered to cease and desist from charging any rate or sum for the transportation of the barrel package on shipments of oil in barrels from the oil regions of western Pennsylvania to New York and New York Harbor points, or to Boston and Boston points, or on reasonable notice promptly to furnish tank cars to complainants and other shippers who may apply therefor for the purpose of loading and shipping oil to such New York Harbor and Boston points as such shippers may direct; and that said defendants notify the public accordingly by publication in their tariffs of rates and charges and also file copies of said tariffs with this Commission.

Defendants also required to refund to the several parties legally entitled thereto, within sixty days after notice of this decision and payment thereof by such parties, all sums received by them for the transportation over their lines of the barrel package on shipments of oil in barrels when the use of tank cars has not been open to shippers impartially, and the shipper claiming reparation has been thereby deprived of their use; and as the amounts wrongfully received from complainants and others who may be entitled to such reparation can not be ascertained from the evidence already taken, the proceedings will be continued for such further action or inquiry in that behalf as may be necessary; further ordered that the rate on shipments of refined petroleum oil, both in tanks and barrels, over the defendant roads or lines shall be the same, and that said rate from said oil regions to New York points shall not exceed 16½ cents per 100 pounds, nor shall said rate from said oil regions to Boston and Boston points exceed 23½ cents per 100 pounds, and said defendants are hereby required to arrange their tariffs of rates and charges accordingly.

Additional orders awarding reparation issued on October 22, 1895. Case pending in United States circuit court, western district of Pennsylvania, to enforce orders.

307. IN THE MATTER OF ALLEGED UNLAWFUL CHARGES FOR THE TRANSPORTATION OF COAL BY THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY.

(Decided November 17, 1892.)

Ordered, That while defendant keeps in effect a rate on coal of any kind or class from mines in Kentucky on its Henderson and Owensboro divisions to Memphis, Tenn., which does not exceed $1.40 per ton, it must abstain from charging for the transportation of the kind of coal known as "run of mines" and "slack" from said mines to Nashville, Tenn., any greater compensation than $1 per ton, and to cease and desist from charging for the transportation of the kind of coal known as "screened coal" from said mines to Nashville any greater compensation than $1.15 per ton; and that any reduction which the defendant may hereafter make in said rate of $1.40 per ton on coal of any kind or class from said mines to Memphis shall be accompanied by a proportionate reduction in rates charged by it on the above-described kinds of coal respectively from said mines to Nashville.

When the case was instituted, the rates to Nashville ranged from $1 to $1.50, according to the season, and a rate of $1 was in force on coal for certain manufacturers. The manufacturers' rate was discontinued during the controversy, a rate of $1 put in on "run of mines" or slack for the year round, and a rate of $1.15 established from April to September for screened coal, such rate to be increased to $1.40 for the remainder of the year.

See recent decision of United States circuit court, middle district of Tennessee, in Interstate Commerce Commission *v.* Louisville and Nashville Railroad Company, refusing to enforce this order.

Case pending in circuit court of appeals.

312. THE POTTER MANUFACTURING COMPANY V. CHICAGO AND GRAND TRUNK RAILWAY COMPANY ET AL.

(Decided December 9, 1892.)

Defendants ordered to cease and desist from charging any greater aggregate rate per 100 pounds for the transportation of unfinished cheap bedroom sets of the character and grade described in the report and opinion of the Commission herein from Lansing and other points in Michigan to Emory and other points in California than 85 per cent of the rate which said defendants contemporaneously charge for the transportation between the same points of such bedroom sets in a completed condition, and said defendants are hereby required to adjust their tariffs of rates and charges accordingly.

At the date of complaint and when the order was issued finished and unfinished cheap bedroom sets took the same rates.

Order complied with.

259. THE BOARD OF TRADE OF CHATTANOOGA V. THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY COMPANY ET AL.

(Decided December 30, 1892.)

Defendants ordered to cease and desist from charging greater aggregate compensation for the transportation of like kind of property from New York, Boston, Philadelphia, Baltimore, or other Atlantic seaboard cities for the shorter distance to Chattanooga than for the longer distance over the same line in the same direction to Nashville, Tenn.

Case pending in United States circuit court, eastern district of Tennessee, to enforce this order.

329. THE CHAMBER OF COMMERCE OF MINNEAPOLIS, MINN., V. THE GREAT NORTHERN RAILWAY COMPANY ET AL.

(Decided January 3, 1893.)

Defendants ordered to revise their schedules of rates and charges so that the rates shown on such schedules or tariffs for the transportation of wheat from hereinafter-described points of shipment in North Dakota and South Dakota to Minneapolis and Duluth, Minn., shall be adjusted in accordance with distance

computed and ascertained in the manner set forth and described in the report and opinion of the Commission herein on said rates on wheat to Minneapolis while rates on wheat now established and in force from the same points to Duluth remain in effect will, upon the basis of such distance, be as follows:

From Fargo, Casselton, Sidney, and points northerly thereof, 1 cent per 100 pounds less to Minneapolis than rates in force from said points to Duluth from Wahpeton, and points northerly thereof as far as the main line of the Northern Pacific and points southerly of Wahpeton as far as, but not including, Fairmount, 1½ cents per 100 pounds less to Minneapolis than rates from said points to Duluth. From Fairmount and all points westerly thereof on the Minneapolis, St. Paul and Sault Ste. Marie and Great Northern railways, including Harlem and Edgley, 2 cents per 100 pounds less than the rates in force from said points to Duluth, and as much more reduction as may be necessary to make a rate to Minneapolis from such of said points as are situated westerly of Rutland of not exceeding 16 cents per 100 pounds, and as much more reduction from said rates to Duluth as may be necessary to make a rate to Minneapolis from Rutland and such of said points as are situated east of Rutland of not exceeding 15 cents per 100 pounds. From all points in North Dakota and South Dakota south of lines extending eastward from Ellendale through Rutland, Hankinson, and Fairmount, and west of the Fargo branch line of the Chicago, Milwaukee and St. Paul Railway, not less than 5 cents below rates in force from said points to Duluth. Defendants required to preserve and maintain a relative adjustment of rates prescribed by this order, and any party to the proceeding may apply for further action and direction in the premises.

Petition for enforcement of the above order filed in the United States circuit court, but before decision the complainant and defendants applied to the Commission for a modification of such order fixing definitely the stations from which differentials are to be allowed and the amount thereof, and it appearing to the Commission that, under existing circumstances and conditions, the modification applied for is acceptable to the parties, a modified order was entered accordingly on March 28, 1904, and the rates therein prescribed were put into effect by the defendant carriers.

311. The Gerke Brewing Company v. The Louisville and Nashville Railroad Company et al.

(Decided February 28, 1893.)

Defendants ordered to cease and desist from charging for the transportation of beer or other property over their continuous line from Cincinnati, Ohio, through Middlesboro, Ky., and other points in Kentucky and Virginia as far as and including Lynchburg, any greater aggregate compensation for carrying carload shipments of like kind of property for the shorter distance from Cincinnati to Middlesboro or to other shorter-distance points on said line than for the longer distance from Cincinnati to Lynchburg or to other longer-distance points on said line.

Case pending in United States circuit court for southern district of Ohio to enforce this order.

334. James & Abbott v. The Canadian Pacific Railway Company et al.

(Decided March 11, 1893.)

Defendants ordered to cease and desist from charging for the transportation of shingles in carloads from Fort Fairfield, Stevens Siding, and Hurds Siding, Me., to Boston, Mass., and other points known as Boston points any greater aggregate rate per 100 pounds than is found and obtained by adding 6½ cents to the rate per 100 pounds which they contemporaneously have in force for the transportation of shingles in carloads from Fredericton, New Brunswick, to Boston and the Boston-rate points aforesaid.

When complaint was made the rate on shingles from Fort Fairfield to Boston was 31½ cents, while from Fredericton it was 16¾ cents. At the date of the order the Fort Fairfield rate was 26½ cents and the rate from Fredericton was 17½ cents. This difference of 9 cents was further reduced by the order to 6½ cents.

Order complied with.

328. The Tecumseh Celery Company v. The Cincinnati, Jackson and Mackinaw Railway Company et al.

(Decided June 15, 1893.)

The defendant, the Wabash Railroad Company, required to classify celery on all portions of its line over which the western classification is in force with cauliflower, asparagus, lettuce, green peas, string beans, oyster plant, eggplant, and other vegetables now enumerated in Class C of that classification, instead of with berries, peaches, grapes, and other fruits now specified in class 3 thereof, and that the defendants, the Cincinnati, Jackson and Mackinaw Railway Company and the Wabash Railroad Company, cease and desist from charging any greater aggregate compensation for the transportation of celery in carloads from Tecumseh, Mich., to Kansas City, Mo., than they charge for the transportation between said points of a carload quantity of any of said other vegetables enumerated in Class C of the western classification; and that said defendants also cease and desist from charging for the transportation from Tecumseh, Mich., to Kansas City, Mo., of mixed carloads of celery and cauliflower or other vegetables specified in said Class C of the western classification any greater aggregate compensation than they charge for the transportation between said points of a carload quantity of either of the vegetable articles embraced in said class.

At time of complaint and date of order celery took third-class rates under the western classification. Since the order the vegetables named above, other than celery, have been advanced from Class C to fifth class; celery not changed—third class

No further action has been requested.

347. The Board of Trade of Troy, Ala., v. The Alabama Midland Railway Company et al.

(Decided August 15, 1893.)

The defendants engaged in the transportation of phosphate rock or class goods to or the transportation of cotton from Troy, Ala., required to cease and desist from charging any greater aggregate compensation for services rendered for such transportation than as follows, to wit: On class goods from Louisville, Ky., St. Louis, Mo., or Cincinnati, Ohio, to Troy, aforesaid, no higher rate than is now charged on such shipments to Columbus, Ga., and Eufaula, Ala. On shipments of cotton from Troy, through Mongomery, Ala., to New Orleans, La., no higher rate of charge than 50 cents per 100 pounds. On shipments of cotton from Troy for export through the ports of Brunswick, Savannah, Charleston, West Point, or Norfolk, no higher rate than is charged on such shipments from Montgomery. On shipments of cotton from Troy to Brunswick, Savannah, or Charleston, no higher rate than is charged on such shipments from Montgomery through Troy. On shipments of class goods from New York, Baltimore, or other Northeastern points to Troy, no higher rate than is charged on such shipments through Troy to Montgomery. On shipments of phosphate rock from South Carolina and Florida fields to Troy, no higher rate than is charged on such shipments through Troy to Montgomery.

(See decision of United States circuit court of appeals, fifth circuit, in Interstate Commerce Commission *v.* Alabama Midland Railway Company et al., affirming decree of United States circuit court refusing to enforce this order. Case pending in Supreme Court.)

330. Phelps & Co. v. The Texas and Pacific Railway Company.

(Decided October 16, 1893.)

Ordered, That while defendant continues to deliver flat or uncompressed cotton in New Orleans to any cotton press or compress company before payment of transportation charges, upon the guaranty of such press or company to pay such charges on demand after payment thereof shall have been refused by the consignees, it shall wholly cease and desist from refusing to make such previous delivery of flat or uncompressed cotton for complainants or other consignees to the Alabama press or the Factors press in New Orleans on a previously executed and sufficient guaranty from said presses or the owners thereof to pay on demand the transportation charges due on such cotton after payment thereof

has been demanded of complainant or said other consignees and such payment has been refused; and said defendant is further hereby directed to abstain from any discrimination whatsoever between complainant and other consignees using said Alabama or Factors press, and the consignees using other cotton presses in New Orleans for or on account of any refusal of the owners or managers of said Alabama or Factors press to pay on demand any sum as freight charges on cotton delivered to said presses, or either of them, in excess of such charges as may be legally due thereon at the time of such demand.

No disobedience reported.

270. BLANTON DUNCAN v. THE ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY ET AL.

271. BLANTON DUNCAN v. THE SOUTHERN PACIFIC COMPANY ET AL.

(Decided November 3, 1893.)

Defendants required to amend their classification and tariffs in conformity with the conclusions set forth in the report and opinion of the Commission, so that there shall not be two west-bound rates, one on household goods and one on emigrants' movables, including household goods, and that one west-bound rate open to all shippers and so published, be put in force by said defendants over their several roads or lines on household goods and emigrants' movables, including household goods, and that said rate to be put into effect from Louisville, Ky., to Los Angeles, Cal., shall not exceed the present west-bound commodity rate of $263 per carload on emigrants' movables between said points.

Present rate, $225.

289. C. O. MORRELL v. THE UNION PACIFIC RAILWAY COMPANY.

(Decided March 2, 1894.)

The defendant, the Oregon Short Line and Utah Northern Railroad Company, required to pay to claimant the sum of $40.51 as reparation and for excessive charges collected on a carload of wheat delivered by him to said defendant on January 19, 1891, for transportation from Pullman, Wash., to Portland, Oreg. During the pendency of the case defendants reduced their rate on wheat between said points from 32½ cents to 23¾ cents per 100 pounds.

292. A. S. NEWLAND ET AL. v. THE NORTHERN PACIFIC RAILROAD COMPANY ET AL.

(Decided March 2, 1894.)

Defendants ordered to cease and desist from charging any greater aggregate compensation for the transportation of wheat in carloads from Ritzville, Wash., to Portland, Oreg., than 20 cents per 100 pounds.

Rate reduced from 32½ to 23¾ cents pending the controversy. Present rate is 21¼ cents.

363. ALANSON S. PAGE ET AL. v. THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY ET AL.

(Decided March 23, 1894.)

Defendants ordered to cease and desist from charging any greater aggregate compensation for the interstate transportation of window shades, plain or decorated, mounted or unmounted, when packed in boxes, than they or either of them contemporaneously charge or receive for like services rendered in the transportation of commodities enumerated as third-class articles in the classification of freight articles in force over their several lines.

Order complied with, but compliance subsequently revoked. At time of complaint and date of order window shades took first-class rates, and they are so classified now.

Petition filed by Commission to enforce order dismissed by United States circuit court for the northern district of New York. Rehearing had before the Commission. Case again decided and substantially the same order entered,

but defendants allowed to limit their transportation of window shades at third-class rates to those valued at $6 per dozen or under, and to make suitable regulations to prevent undervaluation by shippers.

Order not complied with.

367. RHODE ISLAND EGG AND BUTTER COMPANY ET AL. V. THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY ET AL.

(Decided May 26, 1894.)

Ordered, That defendants and other carriers allowed to intervene herein have until July 1, 1894, to consider whether shippers generally who use cases for shipment of eggs known as "returnable cases" are not unduly prejudiced by the classification of such cases as first class in the official classification, under the head of "Egg carriers or cases," "New or old," and the application of first-class rates to the transportation of such cases when returned by consignees to points from whence eggs shipped in such cases have been consigned, and take or refrain from taking action accordingly; and that from and after said date complainants or any other interested shipper or consignee may, if said carriers fail to take satisfactory action, ask to have the case reopened, and thereupon such further direction will be given as may appear to be required.

December 19, 1894, order entered dismissing the case without prejudice.

322. THE FREIGHT BUREAU OF THE CINCINNATI CHAMBER OF COMMERCE V. THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY ET AL.

323. THE CHICAGO FREIGHT BUREAU V. THE LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY COMPANY ET AL.

(Decided May 29, 1894.)

The defendants and each of them engaged in the transportation of freight articles enumerated in the Southern Railway and Steamship Association classification as articles of the first, second, third, fourth, fifth, or sixth class, required to cease and desist from charging any greater aggregate compensation per 100 pounds for the transportation of freight in any such class from Cincinnati, Ohio, or from Chicago, Ill., to Knoxville, Tenn., Chattanooga, Tenn., Rome, Ga., Atlanta, Ga., Meridian, Miss., Birmingham, Ala., or Selma, Ala., than rates per 100 pounds as follows, to wit: From Cincinnati to Knoxville, class 1, 53 cents; class 2, 45 cents; class 3, 37 cents; class 4, 27 cents; class 5, 22 cents; class 6, 20 cents; and to Chattanooga, Rome, Atlanta, Meridian, Birmingham, Anniston, and Selma, various other rates on each of said classes, as specifically set forth in said order. From Chicago to Knoxville, class 1, 93 cents; class 2, 79 cents; class 3, 62 cents; class 4, 44 cents; class 5, 37 cents; class 6, 32 cents; and to Chattanooga, Rome, Atlanta, Meridian, Birmingham, Anniston, and Selma, various other rates on each of said classes, as specifically set forth in said order. Defendants also required to further readjust their tariffs so that rates for the transportation of freight articles from Cincinnati and Chicago to Southern points other than those above specified shall be in due and proper relation to rates put into effect by said defendants in compliance with the provisions of said order.

First-class rates from Cincinnati and Chicago to Knoxville were, during the pendency of the proceedings, 76 cents from Cincinnati and $1.16 from Chicago.

(See decision of United States circuit court, southern district of Ohio, refusing to enforce order. Case pending in circuit court of appeals.)

362. H. W. BEHLMER V. THE MEMPHIS AND CHARLESTON RAILROAD COMPANY ET AL.

(Decided June 27, 1894.)

Defendants ordered to cease and desist from charging any greater aggregate compensation for the transportation of hay or other commodities carried by them under circumstances and conditions similar to those appearing in this case from Memphis, Tenn., to Summerville, S. C., than they contemporaneously

charge for the transportation of hay and such other commodities respectively for the longer distance from Memphis, Tenn., and Charleston, S. C.

(See decision of United States circuit court, district of South Carolina, in above-entitled case, refusing to enforce order. Case pending in United States circuit court of appeals.)

364. THE TRUCK FARMERS' ASSOCIATION OF CHARLESTON AND VICINITY v. THE NORTHEASTERN RAILROAD COMPANY OF SOUTH CAROLINA ET AL.

(Decided April 6, 1895.)

Defendants ordered to cease and desist from charging any greater aggregate compensation for the transportation from Charleston, S. C., to Jersey City, N. J., on the following-named commodities, whether shipped to New York, N. Y., and delivered to consignees at Jersey City or shipped to Jersey City, than as hereinafter, as follows, to wit: 6 cents per quart, $1.92 per crate of 32 quarts, or $3.84 per 100 pounds for the transportation, including cost of refrigeration en route and all services incident to such transportation, of strawberries from Charleston to Jersey City; 59½ cents per standard barrel or barrel crate for the transportation of apples, onions, turnips, squash or cymlings, or egg plant from Charleston to Jersey City; a rate or sum for the transportation of cabbages shipped in standard barrels or barrel crates from Charleston to Jersey City or New York which is three-fourths of the rate contemporaneously charged by defendants on potatoes shipped in standard barrels or barrel crates between said points. Defendants also required to readjust their rates on such commodities from Charleston to Philadelphia, Baltimore, and Washington, so as to bring them into conformity with the law, when compared with rates to Jersey City or New York, put into effect under the terms of this order.

The rate on berries at date of complaint was 5½ cents per quart, $1.76 per 32-quart crate, or $3.52 per 100 pounds; at the time order was issued this rate had been reduced to 4½ cents per quart, $1.44 per crate, or $2.88 per 100 pounds. This did not include cost of refrigeration, amounting to about 2 cents a quart, or 64 cents a crate. Asparagus in crates was reduced 15 cents a crate pending the controversy.

The order has not been complied with.

(See recent decision of United States circuit court, district of South Carolina, in Interstate Commerce Commission *v.* Northeastern Railroad Company of South Carolina et al., refusing to enforce order. Case pending in United States circuit court of appeals.)

353. S. J. HILL & BRO. v. THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY COMPANY ET AL.

(Decided October 19, 1895.)

Defendants ordered to cease and desist from charging any greater aggregate compensation for the transportation of grain or flour in carloads from Nashville, Tenn., to Cordele, Ga., than 21 cents per 100 pounds of grain, 25 cents per 100 pounds of flour in sacks, and 42 cents per barrel of flour, and also from charging any greater compensation for the transportation of grain or flour from Nashville to Cordele than they charge for the transportation of grain or flour from Nashville to Albany or Americus, Ga., over any of their said routes or lines; and that they also cease and desist from charging any greater aggregate compensation for the transportation per 100 pounds of grain or per 100 pounds or barrel of flour from Nashville to Cordele than they charge for the transportation of said commodities, respectively, for the longer distance over the same line, in the same direction, from Nashville through Cordele to Albany, Ga., or from Nashville through Cordele to Macon, Ga., or from Nashville through Cordele to Americus, Ga.,

The rates from Nashville to Cordele were at date of complaint and when order was issued: 27 cents per 100 pounds on grain, 31½ cents per 100 pounds on flour in sacks, and 55 cents per barrel of flour when complaint was filed; 27½ cents per 100 pounds on grain, 32½ cents per 100 pounds on flour in sacks, and 57 cents per barrel of flour when order was issued.

The order was complied with.

352. Cordele Machine Shop v. The Louisville and Nashville Railroad Company et al.

(Decided October 19, 1895.)

Defendants ordered to cease and desist from charging any greater aggregate compensation per ton of coal or pig iron from Birmingham, Ala., to Cordele, Ga., than $1.60 per ton of coal and $1.80 per ton of pig iron; and that said carriers also cease and desist from charging any greater compensation per ton for the transportation of said commodities from Birmingham to Cordele than they charge for the transportation per ton of coal or pig iron from Birmingham to Albany, Ga.; or more than they, together with the Georgia Southern and Florida Railroad Company contemporaneously charge for the transportation per ton of coal or pig iron from Birmingham to Macon, Ga.

The rate on coal at time of complaint to Cordele was alleged to be $2.30 per ton, and that on pig iron to be $3.84 per ton. The coal rate was afterwards made $1.90, and the pig-iron rate was shown to be $3.69 per ton.

The rate of $1.60 per ton on coal ordered was put into effect by the defendants, but the order as to pig iron was not complied with.

153 and 154. The Independent Refiners' Association of Titusville, Pa., and The Independent Refiners' Association of Oil City, Pa., v. The Western New York and Pennsylvania Railroad Company et al. (Two cases.)

(Decision in the matter of reparation filed October 22, 1895.)

Defendants ordered to make reparation to various claimants for unlawful transportation charges for the transportation of oil shipped in barrels from Titusville, Oil City, and other points to New York and New York Harbor points in sums found specifically due to each of said claimants in the report and opinion and order of the Commission filed on said date, the total amount of the money reparation so ordered amounting to about $85,000.

(See same cases, p. 25.)

Case to enforce these orders pending in circuit court for western district of Pennsylvania.

336. E. J. Daniels v. The Chicago, Rock Island and Pacific Railway Company et al.

(Decided November 16, 1895.)

Defendants ordered to cease and desist from charging any greater aggregate compensation for the transportation of the various kinds and classes of freight articles from Chicago, Ill., to Sioux Falls, S. Dak., than 104 per cent of aggregate rates or charges contemporaneously in force over their respective roads for the transportation of like kind of traffic from Chicago to Sioux City, Iowa.

Rates complained of and in force at date of order were 108 per cent of rates to Sioux City.

Order complied with.

337. E. J. Daniels v. The Great Northern Railway Company et al.

(Decided November 16, 1895.)

The defendant, the Great Northern Railway Company, ordered to cease and desist from charging any greater aggregate compensation for the transportation of the various kinds and classes of freight articles from Duluth, Minn., to Sioux Falls, S. Dak., than aggregate rates or charges contemporaneously in force for the transportation of like kind of traffic from Duluth to Sioux City, Iowa, over the route formed by its road and that of the defendant, the Sioux City and Northern Railroad Company.

Rates complained of and in force at time of order were 108 per cent of rates to Sioux City.

Order complied with.

402. THE COLORADO FUEL AND IRON COMPANY V. THE SOUTHERN PACIFIC COMPANY ET AL.

(Decided November 25, 1895.)

Defendants ordered to cease and desist from charging any greater aggregate compensation for the transportation from Pueblo, Colo., to San Francisco, Cal., of steel rails and railway fastenings in carloads than 45 cents per 100 pounds, and of bar iron, cast iron, water pipe, pig iron, billets, blooms, rivets, nails, or spikes, in carloads, than 37½ cents per 100 pounds; and that defendants also cease and desist from charging for the transportation of said commodities or other iron and steel articles from Pueblo to San Francisco any greater aggregate compensation than 75 per cent of aggregate rates of charges contemporaneously in force by or over the road or roads, line or lines, of any of the defendant carriers for the transportation of like kind of traffic from Chicago, Ill., to San Francisco.

Case held open for such further proceedings or action as may appear necessary in regard to any change in the relation of rates on iron and steel articles to San Francisco from Pueblo and Chicago, Columbus, Pittsburg, and other eastern points which may hereafter be brought about through material change in the adjustment of rates in force on such articles to San Francisco from Chicago, Columbus, Pittsburg, and other eastern points of shipment, and also held open for any required action in regard to the relation of rates as between steel rails and bar iron or as between iron and steel articles generally, as shown in this case and described or referred to in the report and opinion of the Commission herein; but nothing in this order shall prevent the defendants from changing the rates on these commodities within the maximum rate herein above provided for steel articles from Pueblo to San Francisco, and as they may be advised is lawful from other localities.

The rate on steel rails and bar iron from Pueblo to San Francisco at time of complaint and date of order was $1.60 per 100 pounds. From Chicago the rates to San Francisco were 60 cents on rails and 50 cents on bar iron.

Order complied with.

384. MILTON EVANS V. THE OREGON RAILWAY AND NAVIGATION COMPANY ET AL.

(Decided February 8, 1896.)

The defendants, the Oregon Railway and Navigation Company and Edwin McNeill, receiver thereof, required to cease and desist from charging any greater compensation for the transportation of wheat in carloads from Walla Walla, Wash., to Portland, Oreg., than 19½ cents per 100 pounds.

When complaint was filed the rate was 23½ cents. At date of order it was 21¼ cents.

Order complied with.

391. H. D. MAY V. EDWIN MCNEILL, RECEIVER OF THE OREGON RAILWAY AND NAVIGATION COMPANY ET AL.

(Decided February 8, 1896.)

The defendants, the Oregon Railway and Navigation Company and Edwin McNeill, the receiver thereof, required to cease and desist from charging any greater compensation for the transportation of wheat in carloads from Dayton, Wash., to Portland, Oreg., than 20 cents per 100 pounds.

When complaint was filed the rate was 23¾ cents. At date of order it was 21¼ cents.

Order complied with.

414. THE JOHNSTON-LARIMER DRY GOODS COMPANY V. THE ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY ET AL.

(Decided May 12, 1896.)

The defendants, the Atchison, Topeka and Santa Fe Railway Company and the Gulf, Colorado and Santa Fe Railway Company, ordered to cease and desist from charging more for the transportation of molasses, sugar, rice, or coffee

in carloads, or cotton piece goods in any quantity, from Galveston, Houston, or other shipping point in Texas for the shorter distance over their roads to Wichita, Kans., than they contemporaneously charge for the transportation of such commodities, respectively, over their roads from the same point of shipment to Kansas City or St. Joseph, Mo., or Atchison or Leavenworth, Kans. In the transportation of cotton piece goods in any quantity, molasses, sugar, rice, or coffee in carloads from Galveston, Houston, or other shipping point in Texas, the defendant, the Atchison, Topeka and Santa Fe Railway Company, and each and every of the other defendants engaged with it in such transportation, ordered to cease and desist from charging more in the aggregate for the transportation of any of said commodities to Wichita, Kans., than they contemporaneously charge for the transportation of said commodity from the same point of shipment to Kansas City or St. Joseph, Mo., or Atchison or Leavenworth, Kans.

In the transportation of cotton piece goods in any quantity, molasses, sugar, rice, or coffee in carloads from Galveston, Houston, or other shipping point in Texas, the defendants, the Chicago, Rock Island and Pacific Railway Company and the Chicago, Rock Island and Texas Railway Company, ordered to wholly cease and desist from charging more in the aggregate for the transportation of any of said commodities for the shorter distance over their roads to Wichita, Kans., than they contemporaneously charge for the transportation of said commodity for the longer distance over their route from the same point of shipment to Kansas City or St. Joseph, Mo., or Atchison or Leavenworth, Kans. In the transportation of cotton piece goods in any quantity, molasses, sugar, rice, or coffee in carloads from Galveston, Houston or other shipping point in Texas, the defendant, the Chicago, Rock Island and Pacific Railway Company, and each and every of the other defendants engaged with it in such transportation, ordered to cease and desist from charging more for the transportation of any of said commodities to Wichita, Kans., than they contemporaneously charge for the transportation of said commodity from the same point of shipment to Kansas City or St. Joseph, Mo., or Atchison or Leavenworth, Kans.

In the transportation of cotton piece goods in any quantity, molasses, sugar, rice, or coffee in carload lots from Galveston, Houston, or other shipping point in Texas, the defendants, the Missouri Pacific Railway Company and the Missouri, Kansas and Texas Railway Company, and each of them, and each and every of the other defendants engaged with them, or either of them, in such transportation, ordered to cease and desist from charging more for the transportation of any of said commodities to Wichita, Kans., than they contemporaneously charge for the transportation of said commodity from the same point of shipment to Omaha, Nebr., or Council Bluffs, Iowa.

At or about the time of complaint the cotton piece-goods rates from Galveston were 84 cents to Wichita and 45 cents to Kansas City. At date of the order the rate to Wichita was $1.30, and this rate was also charged to Kansas City by some of the lines, while others had in force a rate to Kansas City of 66 cents.

Order complied with except by the defendants, the Missouri Pacific Railway Company and the Missouri, Kansas and Texas Railway Company.

395. The Jerome Hill Cotton Company v. The Missouri, Kansas and Texas Railway Company.

(Decided May 20, 1896.)

Defendant ordered to cease and desist from charging compensation at the rate of 80 cents per 100 pounds for the transportation of uncompressed cotton from Eufaula, South Canadian, or Stringtown, Ind. T., to St. Louis, Mo., and from charging compensation at the rate of 70 cents per 100 pounds for the transportation of uncompressed cotton from Wagoner, Ind. T., to St. Louis, Mo., which said rates are found and declared in and by the report and opinion herein to be unreasonable and unlawful. Defendant also ordered to cease and desist from charging more in the aggregate for the transportation of cotton for the shorter distance over its line from Eufaula, South Canadian, or Stringtown, Ind. T., to St. Louis, Mo., than for the longer distance over the same line, in the same direction, from Denison, Tex., to St. Louis, Mo., the shorter being included within the longer distance. Defendant also ordered to cease and desist from charging more for the transportation of uncompressed cotton from Wagoner, Eufaula, or South Canadian, Ind. T., to St. Louis, Mo., than 60 cents per 100 pounds.

Defendant also ordered to cease and desist from charging more for the transportation of uncompressed cotton from Stringtown, Ind. T., to St. Louis, Mo., than 65 cents per 100 pounds. Defendant also ordered to pay to complainant two hundred and sixty-one dollars and seventy-seven cents ($261.77) as reparation for excessive and unlawful transportation charges collected from it on shipments of uncompressed cotton from Wagoner, Eufaula, South Canadian, and Stringtown, Ind. T., to St. Louis, Mo., prior to the commencement of this proceeding, and complainant allowed until August 1, 1896, to make proof of the amounts paid as transportation charges to defendant on shipments since the filing of the complaint in this proceeding of uncompressed cotton from said points to St. Louis aforesaid in excess of rates herein found reasonable.

In pursuance of the above order complainant offered evidence showing the amount of such excess charges since the date of filing complaint to be $687.57. and submitted a statement from the defendant that such amount was correct. A supplementary order (under date of July 15, 1896), was accordingly issued, directing the payment by defendant of this additional amount. These orders for reparation are understood to have been complied with. Rates on cotton from the points involved, put in effect since the decision, are as follows:

Present rates to St. Louis.

From—	Cents.
Wagoner, Ind. T	65
Eufaula, Ind. T	75
South Canadian, Ind. T	75
Stringtown, Ind. T	75

404. E. D. McClelen et al. v. The Southern Railway Company, The Pennsylvania Railroad Company, The Cumberland Valley Railroad Company, The Norfolk and Western Railroad Company, etc., et al.

(Decided June 6, 1896.)

Defendants ordered to cease and desist from making, in the transportation of freight articles from New York, Philadelphia, and Baltimore any greater charges over the shorter distance to Piedmont, Ala., than they charge on like kind of traffic for the longer distance over the same line, in the same direction, to Anniston, Ala.

Petition to enforce order filed in United States circuit court for northern district of Alabama.

405. E. D. McClelen et al. v. The Southern Railway Company et al.

(Decided June 6, 1896.)

This defendant ordered to cease and desist from making, in the transportation of freight articles from Chattanooga, Tenn., any greater charge for the shorter distance to Piedmont, Ala., than for the longer distance over the same line, in the same direction, to Anniston, Ala.

Petition to enforce order filed in United States circuit court for northern district of Alabama.

386. The Board of Trade of Lynchburg, Va., et al. v. The Old Dominion Steamship Company, The Norfolk and Western Railroad Company, etc., et al.

(Decided June 29, 1896.)

Ordered, That the above-named defendants pay to the several intervening petitioners, Witt & Watkins et al., as reparation for unlawful transportation charges collected from said petitioners during the period between May 29, 1894, and August 1, 1894, the following aggregate sum: One hundred and nine dollars and one cent ($109.01).

Order complied with.

This amount represented sums paid by the petitioners for freight transportation from New York to Lynchburg, Va., during the period mentioned in excess of rates established at the time for like carriage over the same line for the longer distance to Knoxville, Tenn. The normal basis of these rates is, first class, 54

cents to Lynchburg and $1 to Knoxville, but during the time mentioned a rate war was in progress, and the Knoxville rate was reduced as low as 35 cents per 100 pounds.

387. THE BOARD OF TRADE OF LYNCHBURG, VA., ET AL., V. THE MERCHANTS AND MINERS' TRANSPORTATION COMPANY, THE NORFOLK AND WESTERN RAILROAD COMPANY, ETC., ET AL.

(Decided June 29, 1896.)

Ordered, That the above-named defendants pay to the several intervening petitioners, Witt & Watkins et al., as reparation for unlawful transportation charges collected from said petitioners during the period between May 29, 1894, and August 1, 1894, the following aggregate sum: Six hundred and sixty dollars and forty-eight cents ($660.48).

Order complied with.

This amount represented sums paid by the petitioners for freight transportation from Boston and Providence to Lynchburg, Va., during the period mentioned in excess of rates established at the time for like carriage over the same line for the longer distance to Knoxville, Tenn. The normal basis of these rates is, first class, 54 cents to Lynchburg and $1 to Knoxville, but during the time mentioned a rate war was in progress, and the Knoxville rate was reduced as low as 35 cents per 100 pounds.

409. THE COMMERCIAL CLUB OF OMAHA V. THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY; THE CHICAGO, ROCK ISLAND AND TEXAS RAILWAY COMPANY; THE MISSOURI PACIFIC RAILWAY COMPANY; THE BURLINGTON AND MISSOURI RIVER RAILROAD IN NEBRASKA; THE KANSAS CITY, ST. JOSEPH AND COUNCIL BLUFFS RAILROAD COMPANY; THE MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY; THE ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY AND ALDACE F. WALKER, JOHN J. MCCOOK, AND J. C. WILSON, RECEIVERS THEREOF; THE GULF, COLORADO AND SANTA FE RAILWAY COMPANY; THE HOUSTON AND TEXAS CENTRAL RAILROAD COMPANY; THE INTERNATIONAL AND GREAT NORTHERN RAILROAD COMPANY; THE TEXAS AND PACIFIC RAILWAY COMPANY; THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY; THE WABASH RAILROAD COMPANY.

(Decided August 21, 1896.)

The defendants were ordered to so adjust their class rates that charges between Omaha, Nebr., and Texas points shall not be as great as similar charges between Chicago and Texas points, nor greater than class rates in force between Davenport, Iowa, Rock Island or Moline, Ill., and such Texas points. Defendants were also required not to charge any greater compensation for the transportation of syrup from Omaha to Texas points than from Davenport to such points.

At time of complaint and date of order class rates between Omaha and Texas points were as high as those between Chicago and Texas points, and much higher than those applying between St. Louis or Kansas City and Texas points, and points taking common rates.

The order issued was complied with.

Referring to Senate Document No. 30, Fifty-fourth Congress, second session, entitled "Changes in transportation charges, etc.:"

This document is a report from the Interstate Commerce Commission to the Senate of the United States in response to a resolution of the Senate of March 18, 1896. This report contains a statement of the cases, arranged according to the dates of the decisions, in which changes in rates, freight classification, or in practices affecting transportation charges, had been ordered by the Commission from its organization up to August 21, 1896.

The orders shown on the first 20 pages were all issued during the period between April 5, 1887, the date when the Commission was organized, and January 12, 1892, when Judge Cooley's resignation

took effect. Judge Cooley does not, however, appear to have participated in any order after May 16, 1891.

An examination of the record of cases in that report shows that rate-regulating orders were made during the first year of the Commission's existence, in which the following powers were exercised:

First. Reducing rates found to be unreasonable under the first section of the act and prescribing a maximum charge for the future. In the case of Evans *v.* The Oregon Railway and Navigation Company (1 I. C. C. Rep., 325), decided December 3, 1887, the defendant carrier was ordered to cease and desist during the current grain season—that is, ending the 30th of June, 1888—from charging or receiving more than 23½ cents per 100 pounds on wheat transported over its railroad lines from Walla Walla, Wash., to Portland, Oreg. The rate at the time the complaint was filed was 30 cents per hundred pounds, and when the order was issued the rate was 25 cents per hundred pounds. The order reducing the rate to 23½ cents per hundred pounds was complied with.

Second. Prescribing a definite and certain relation of rates as between different localities to be observed in the future. In the case of the Board of Trade Union of Farmington *v.* Chicago, Milwaukee and St. Paul Railway (1 I. C. C. Rep., 215), decided November 1, 1887, the Commission ordered that while the defendant charged a rate of 7½ cents per hundred pounds from Minneapolis and other points on its River and La Crosse divisions to Milwaukee, Chicago, and other points in Iowa and Illinois on wheat, flour, and mill stuffs, it must not exceed a rate of 10 cents per hundred pounds, or a difference of one-third of the amount of the lesser charge, for transporting the like kind of property to the same points from Farmington, Northfield, Faribault, and Owatonna, Minn. Rates of 15 and 13½ cents were in effect when the complaint was filed and when the order was issued. The order was complied with.

Third. Prescribing a like definite relation in rates for the future as between different commodities. In the case of Reynolds *v.* Western New York and Pennsylvania Railroad Company (I. C. C. Rep., 393), decided January 13, 1888, the defendants were ordered to cease and desist from charging more for the transportation of railroad ties from points in Pennsylvania to Salamanca and Olean, N. Y., than they charged for the transportation of lumber between the same points. The order was complied with.

The cases above cited are only examples of orders issued by the Commission and shown in the report mentioned while Judge Cooley was a member of the Commission, and, as above indicated, he joined in authorizing the issuance of these orders.

A case decided by the Commission, in an opinion by Commissioner Schoonmaker, has sometimes been referred to as holding in 1887 that the Commission had no authority to prescribe reasonable rates. This was the case of Thatcher *v.* Delaware and Hudson Canal Company (1 I. C. C. Rep., 152), decided July 25, 1887. That case, however, did not involve the reasonableness of rates. The avowed object of that proceeding was to compel the application of proportions of through rates to reshipments from Schenectady, N. Y., to Boston and Boston points. The decision made rests upon the ground that the change desired would make the rate from Schenectady less than from intermediate stations between Schenectady and Boston, and

would thus bring about a conflict with the fourth section unless the carrier should voluntarily reduce the rates from the intermediate stations. There was no complaint in that case that the rates from intermediate stations were unreasonable, nor was there any evidence upon that point. In this connection the Commission used the language which has sometimes been referred to as disclaiming the power to prescribe a reasonable rate on complaint.

The Commission said, as to rates from the shorter-distance stations, concerning which no complaint had been made and no evidence offered:

> It is therefore impossible to fix future rates in this case, even if the Commission had the power to make rates generally, which it has not. Its power in respect to rates is to determine whether those which the roads impose are for any reason in conflict with the statute.

It was impossible to fix rates from the shorter-distance stations, because the Commission had before it no complaint or any evidence; and if it had power to make rates generally—that is, without complaint or evidence—it could not have done so in the absence of some information on the subject.

The Commission said, further:

> If the complainant thinks the rates from Schenectady and intermediate points to Boston and Boston points are excessive he can raise that question directly and distinctly, and the Commission can then enter upon a full investigation of the facts bearing upon it.

Mr. BACON. In that connection I wish also to file a statement which I presented to the House Committee on Interstate and Foreign Commerce during its sessions last winter, showing a few instances in which the orders of the Commission were only partially complied with. When the Commission gave specific orders as to the changes in rates in certain instances, or in a number of instances, the compliance on the part of the carrier was only partial. I file this in reply to the inquiry that was made when I was on the stand previously.

The statement is as follows:

ADDITIONAL STATEMENT OF MR. E. P. BACON.

Mr. BACON. Mr. Chairman and gentlemen of the committee, I wish to thank you for having accorded me a little further time to conclude the remarks which I commenced this morning and to say that it is highly appreciated.

In line with what I was stating this morning I have an additional paper to submit in relation to a question that I was asked when I was on the stand some weeks ago as to whether a carrier, in case of the Commission ordering a change in rates, would make a slight change instead of complying fully with the order of the Commission. I have a statement of a few cases of that kind which I will not read, but will file; but I will hastily refer to one or two instances. One is a case against the C. J. M. and R. Railway Company and others, decided June 15, 1893, involving rates from Tecumseh, Mich., to Kansas City, Mo., on celery and other vegetables which had been placed, respectively, in class 3 and class C. Class 3 is one of the numbered classes, of which there are six, and class C is one of the lettered classes, of which there are five, showing a difference of six classes in the classi-

fication of the respective articles. The order of the Commission was that both should be charged at the same rate, or, in other words, classified in the same class. The action of the carrier was to keep celery in class 3 and put other vegetables in class 5.

Another case is Newland and others against the Northern Pacific Railroad Company, decided March 21, 1894, involving the rate on wheat from Ritzville, Wash., to Portland, Oreg., which was 32½ cents. The Commission ordered it reduced to 20 cents. The railroad company reduced it to 21½ cents, making a very large reduction to be sure, but not such reduction as was required by the Commission.

In another case, the Cordele Machine Shop against the Louisville and Nashville Railroad Company and others, decided October 19, 1895, in the transportation of pig iron from Birmingham, Ala., to Cordele, Ga., the rate being $3.84 per ton, the Commission ordered a maximum rate of $1.80 per ton. The carrier reduced it to $3.69 per ton—that is, reduced it 15 cents when it was required by the Commission to reduce it $2.04. In the case of the Georgia Peach Growers' Association against the Atlantic Coast Line Railroad et al., in a case decided June 4, 1904, the rate on peaches was $80 per car, and the rate ordered by the Commission was $50 a car. The rate made by the railroad after the order was $65 per car. I will file a copy of these orders and changes in the rates after the order, showing how carriers have only partially complied with orders of the Commission.

The CHAIRMAN. Do you understand that there are many other cases?

Mr. BACON. The list which I have comprises six cases, which are presented as examples of the action of carriers in complying only to a partial extent with orders of the Commission.

Table showing a few examples of how carriers have only partly complied with orders of the Commission.

Title of case.	Date of decision.	Places involved.	Commodities.	Rate at date of order.	Maximum rate ordered.	Change made after order.
Re Food Products.	June 7, 1890	Missouri River points to east St. Louis.	Wheat, per 100 pounds.	$0.17½	$0.14	$0.15
			Corn, per 100 pounds.	.15	.12	.12
			Flour, per 100 pounds.	.17½	.14	.15
Tecumseh Celery Co. v. C. J. and M. R. Co. et al.	June 15, 1893	Tecumseh, Mich., to Kansas City, Mo.	Celery, per 100 pounds.	Class 3	Both to be charged same rate.	Class 3.
			Other vegetables, per 100 pounds.	Class C		Class 5.
Newland et al. v. N. P. R. Co. et al.	Mar. 21, 1894	Ritzville, Wash., to Portland, Oreg.	Wheat, per 100 pounds.	.32½	.20	.21½
Cordele Machine Shop v. L. and N. R. Co. et al.	Oct. 19, 1895	Birmingham, Ala., to Cordele, Ga.	Pig iron, per ton.	3.84	1.80	3.69
Ga. Peach Growers' Assn. v. A. C. L. R. Co. et al.	June 4, 1904	Boston to New York as part of through shipment from Georgia points.	Peaches, per car.	80.00	50.00	65.00
Denison L. and P. Co. v. M. K. and T. R. Co.	June 25, 1904	South McAlester, Ind. T., to Denison, Tex.	Coal, per ton.	1.90	1.25	1.50

The foregoing cases are taken from the reports of the Interstate Commerce Commission.

Senator CULLOM. What date was that? Was that before the Supreme Court decided that the orders for future rates need not be obeyed that they were illegal?

Mr. BACON. The dates of the various cases extend from June 7, 1890, to June 29, 1904.

The CHAIRMAN. A part of your statement before the House committee last winter on that subject?

Mr. BACON. Yes; on the partial compliance of the carriers with the orders of the Commission, a few instances, in a comprehensive statement.

I would like also to file Senate Document 257, Fifty-eighth Congress, second session, being a report from the Interstate Commerce Commission to the Senate of the advances made in freight rates during the preceding four years.

Senator KEAN. I think we have already had that filed.

Mr. BACON. If it is already in evidence it need not of course be repeated.

The CHAIRMAN. I think we had better suspend putting that in for the present until the Interstate Commerce Commission comes before us.

Mr. BACON. I wish to make a brief reference to the statement made by Mr. Hiland, of the Chicago, Milwaukee and St. Paul Railway Company, when he was on the stand a few days ago, the traffic manager at present, in which he stated that State railway commissions are in a position to familiarize themselves with traffic conditions in their respective States and to reach an intelligent understanding. I desire to say that the railway people nevertheless opposed legislation and have opposed it persistently and continuously which sought to establish such commissions, and have opposed it as strenuously as they oppose the national regulation of rates. While they admit that the State commissions are able to cope with the subject and reach an intelligent conclusion and render wise decisions, they are still opposing in every way the establishment of further State commissions, and they oppose giving this desired power to the Interstate Commerce Commission on the ground that it is not competent to deal with them. My point is that if the State commissions are capable of dealing with the traffic within the States then the Interstate Commerce Commission would be equally so with reference to traffic between the different States, and that although Mr. Hiland admits that these State commissions have operated advantageously, there is continuous opposition to the establishment of State commissions, and just as strenuous opposition as there is to the conferring of power upon the Interstate Commerce Commission as now proposed.

I have nothing further to say at present, gentlemen, and wish to thank you for your kind attention.

STATEMENT OF MR. DAVID A. WILBERT.

The CHAIRMAN. State your name, residence, and place of business.

Mr. WILBERT. David A. Wilbert. I am a member of the firm of Frank Wilbert & Co., situated at Pittsburg, Pa. We are in the fruit and produce business. We buy, I presume, 90 per cent of the fruits that we handle.

Senator KEAN. How extensive is your business?

Mr. WILBERT. We handle a great many strawberries. In fact, at one time we were as large receivers as there were in the city of Pittsburg from the North Carolina belt. We handled quite a few of them this year, and we have always handled all the berries we got from there in the Armour cars. The service of the Armour Car Lines to us is very satisfactory. We find that where the berries are put in the car in good condition, and the railroad companies make the schedule time, as a rule they arrive in Pittsburg in good condition. So far as their charges are concerned, they have a rate of 28 cents per crate on a carload of a minimum of 200 crates, and where there are 300 crates in the car they charge us 24 cents a crate.

The railroad company charges us 58 cents per crate freight. That makes a cost of 86 cents per crate, total, and that includes, of course, the refrigerating charges and all. Now, we use these cars as a sort of insurance against loss on those goods. As I have explained to you, when they are put in the cars in good condition as a rule they arrive in that condition, provided they make schedule time. We have never had any difficulty in that particular line, and I consider the Armour Car Line or any other private refrigerator line that have good cars a public benefactor. I can just relate that Monday week there were 8 cars of berries came to the city of Pittsburg. Seven of them were in ventilated cars and 1 was in a box car. On their arrival there they were entirely worthless and were condemned by the board of health. The value of those berries, had they been shipped in refrigerator cars and arrived on schedule time and been in good condition, would have been from $3.50 to $4 a crate, or about $8,400 to $9,600 on our market. Now, so far as the value of these goods on any particular market is concerned, the rate of freight does not really enter into it. The supply and demand regulates the price, or, in other words, the city of Pittsburg will take possibly 12 to 15 cars of berries to-day. If there were 5 cars of berries in our market to-day, they may possibly be worth $4. If there are 10 cars, they may be worth $3, and if there are 15 carloads, they may be worth $2.50, and so on. That governs the price almost entirely.

Senator FORAKER. That is, supply and demand?

Mr. WILBERT. Yes; the freight charges and the refrigerating prices have nothing to do with the price.

Senator DOLLIVER. But if the refrigerator charges come to be so as to amount to nearly as much as the goods, it seems to me it would have to be figured in by somebody.

Mr. WILBERT. It has not, as I have explained to you; it is supply and demand. We get just as much as we can for our goods. If there was possibly one car of berries on the Pittsburg market and I had that one car of berries, I would endeavor to get five or six dollars a crate for it.

Senator DOLLIVER. What do you pay for those in North Carolina?

Mr. WILBERT. This year the lowest I paid was $1.65.

Senator FORAKER. For how many berries?

Mr. WILBERT. A crate of 32 quarts.

Senator DOLLIVER. Is it of any interest to anybody what the freight is on the car to Pittsburg?

Mr. WILBERT. None whatever, as far as the price is concerned; if the price was reduced, of course we practically receive the benefit of it.

The commission men—we are not commission men, for we are buyers, and I never handled a car of berries out of North Carolina in my life on commission. We do not receive the benefit here, but the party who ships on commission does.

Senator DOLLIVER. Would you pay the same down there for them if the freight was 50 cents as if it was $1?

Mr. WILBERT. We buy the stuff as cheap as we can.

Senator DOLLIVER. Would that enter into your calculation as to what you could afford to pay?

Mr. WILBERT. It is all owing to what our market is; it costs possibly 2½ to 3 cents a quart to pack those berries, and after they were picked down there and before they left the station if they did not want to take that price they need not, and supposing there was no demand on the market the consequence was that they would have to take what we would offer them. We could not afford to use them at any profit if there was no demand for them.

Senator KEAN. As I understand you, you say that you are a shipper from this North Carolina district, a very large shipper of berries to Pittsburg. It has been testified here that that district is controlled almost exclusively by the Armour Car Lines. Do you ship those goods that you buy down there without knowing what the charges are on them?

Mr. WILBERT. We always know the charges before we begin operating.

Senator KEAN. How do you go about it to find that out?

Mr. WILBERT. We can get it from the Armour agents or from the railroad company; the railroad company gives you the cost of the freight and the Armour charges. The railroad company collects the freight and the Armour charges, but it is separate, however. They will make out your bill, and it will be for freight so much and then for advanced charges, which are the Armour charges, and they will be so much. They will make out a bill that on 200 crates the charges

Senator KEAN. When you take your berries from North Carolina, your bill as an advance charge. We of course know that that is the Armour charge.

Senator KEAN. When you take your berries from North Carolina do you know what the freight rate is?

Mr. WILBERT. Yes.

Senator KEAN. And what the Armour charge is?

Mr. WILBERT. Yes; or any other section.

Senator KEAN. What is the charge?

Mr. WILBERT. Twenty-eight cents a crate on a car of 200 crates. That is the minimum; and on a car of 300 crates it is 24 cents per crate of 32 quarts.

Senator FORAKER. That is $72 a car, you mean, on 300 crates?

Mr. WILBERT. Yes; and $56 a car of 200 crates. Those cars must be iced fully twelve hours before we put the berries in them, in order to cool them off.

Senator FORAKER. How much is the freight on that $72 car?

Mr. WILBERT. It would be 58 cents a crate, and then 28 cents is the Armour charge. The Armour charge is the same throughout the entire belt of North Carolina.

Senator FORAKER. You said it would be 24 cents a crate.

Mr. WILBERT. On 300 crates, yes; and 28 cents on 200 crates.

Senator FORAKER. I am talking about the one now that has 300 crates.

Mr. WILBERT. Twenty-four.

Senator FORAKER. What is the freight on that?

Mr. WILBERT. It would be just 58 cents a crate. When we get to the Chadbourn district the freight is 10 cents more, but the railroad company charges that additional 10 cents. It is not the Armour people. As to the question of supply and demand, I can recall four or five years ago that we got the first berries that came out of North Carolina, and we paid $6 a crate for them. They averaged $1,800 a car. We got two cars of them, and I can recollect very distinctly the day they came it began to snow, and we were out just about $2,000.

The weather got cold and there was no demand for them. The consequence was that we had to hold the cars, and of course they were still coming from North Carolina and receipts were accumulating in the city of Pittsburg. We had to meet the market. My first experience in shipping berries was from Tennessee. I shipped in the C. F. T. cars at that time. At that time the railroad company did not collect for the refrigeration. The refrigerating company made a draft for that themselves. I believe I was the first person to ship berries out of Chattanooga, Tenn., in a private car line. That was about six or seven years ago. They arrived in Pittsburg in bad condition. That was the American Refrigerator Transit Company. There was quite a heavy loss on that. It was through their carelessness in not having icing stations along the route, and the loss was over $1,900. They paid every dollar of it. So that it is a sort of insurance, as I stated in the beginning. We simply could not do business if the Armour people were to take their cars out of service to-day. It would cause the growers of the country millions of dollars loss, and also to people like myself who handle that line of goods. If we did not have the refrigerator cars to handle that kind of business, we could not handle the goods at all.

Senator KEAN. Do you get perishable fruits from any other section of the country?

Mr. WILBERT. Yes; in Delaware and New Jersey occasionally.

Senator KEAN. Do they all come in Armour cars?

Mr. WILBERT. As a rule we prefer them.

Senator KEAN. Why?

Mr. WILBERT. They are a better car than any other, and they are so kept that they are properly iced, and so forth. In fact, it is a guaranty almost against any decay, provided the stuff is properly taken care of. There are other car lines that give pretty good service, but as a rule the railway company's cars would not be suitable for that class of goods at all. Take the M. D. T. cars, and I would not think of putting in berries and shipping them in a car of that kind. In the first place, they only hold 3 tons of ice, while I think the smallest car of the Armours' holds 5 tons.

Senator FORAKER. You think 5 tons is as much as the Armour car will hold?

Mr. WILBERT. From 5 to 6 tons. There are some that will hold 6 tons. I have iced them frequently.

Senator FORAKER. It would not hold 8?

Mr. WILBERT. I don't think there is any that I ever knew that would hold 8.

Senator KEAN. Have you ever had many claims for damages?

Mr. WILBERT. I have had claims against them; yes, sir.

Senator KEAN. Who do you make those claims against?

Mr. WILBERT. We make them against the railroad company. They were always investigated by the Armour people, and when they were at fault they always settled very satisfactorily. I have never yet had a claim turned down by them.

Senator KEAN. Then you think that the Armour people on the whole give satisfactory service, but at a pretty high price?

Mr. WILBERT. They are a little high price, but when you get something good you have to pay for it.

Senator KEAN. Have you heard the statement made by people here, complaining about this service and about their charges?

Mr. WILBERT. Not other than that made by Mr. Mead, who spoke this morning.

Senator KEAN. You heard him telling of a case where perishable fruits were sent up from two points in Tennessee about equidistant from Chicago, and one of them had a charge of, I think, $15 for icing, and the other had a charge of $45, billed to the same firm?

Mr. WILBERT. Yes.

Senator KEAN. How do you account for such a discrimination?

Mr. WILBERT. I can not account for it, if they were both the same cars. Let me state also that I also use the Illinois Central cars and other refrigerator cars where the charges are considerably less, but not for high-class perishable goods. We will take cucumbers from New Orleans, and cabbages and such stuff from other points, from Mobile, Ala., and Crystal Springs, Miss., and we will use the Illinois Central cars, because that class of goods is not so high a class of perishable goods and they do not need the same attention. I can not understand, if they were both the Armour cars, how that was.

Senator KEAN. Your idea is that all commission merchants, and other purchasers of these perishable fruits, ought to have the same kind of a deal with this company?

Mr. WILBERT. Yes; and so far as I know there is not any discrimination.

Senator KEAN. Is there any publicity in their charges?

Mr. WILBERT. Yes; the schedule of rates you can get from the railroad company. There is a printed tariff.

Senator KEAN. Are you so familiar with the general business to state that these charges are accessible to different men and to commission merchants, so that a man can make an estimate when he is trying to purchase his fruit as to what the cost would be of getting the car there?

Mr. WILBERT. We know exactly what it is before we enter into a deal. North Carolina is now about through shipping berries. We will begin operating next Monday in Delaware. We will know the exact cost of the fruit and the exact cost of refrigeration before we ship a car.

Senator KEAN. Did you hear the statement of Mr. Mead that it was impossible for people situated as he is in Boston to tell in advance

what these charges were going to be, so as to enable him to transact his business on business principles?

Mr. WILBERT. I heard him state that, and I also heard him state that he did not handle any berries. He probably would not be interested to know. I do not know that that is the rule in Boston, but it is not the rule in Pittsburg.

Senator KEAN. That is the rule, but it would probably be applicable to berries and to everything else.

Mr. WILBERT. I would think so.

Senator KEAN. Have you heard of the Armour people being engaged themselves in the business of commission merchants—handling these perishable goods?

Mr. WILBERT. Never berries. I know that they handle butter, eggs, and cheese, and I also know that they endeavored to handle apples and potatoes, etc., and onions in the city of Pittsburg, but they did not make a success of it. I know they have quit it.

Senator KEAN. If they should enter into that business as merchants, the fact that they own these facilities would enable them to give themselves a little better deal than they would give to people on the outside, would it not?

Mr. WILBERT. It might, if you look at it in that light; but, on the other hand, when they can rent their cars for so much money it really would not be any better, from the fact that they can get the same price from somebody else. Furthermore, the Armour car is not used for stuff that they were handling at that time. The Armour car is not used for apples, potatoes, onions, etc. We use other refrigerating cars for that purpose, where there is no charge at all.

Senator KEAN. I think that is all.

STATEMENT OF MR. JOSEPH H. CALL.

The CHAIRMAN. Please state your name, place of residence, and business.

Mr. CALL. I am an attorney at law, and I reside at Los Angeles, Cal.

The CHAIRMAN. I believe you are to speak on the private car system in your State.

Mr. CALL. Mr. Chairman and Senators, I have come before this committee on behalf of the citrus-fruit interests in southern California, and at their request to urge an amendment to the existing interstate-commerce act which will confer upon the Interstate Commerce Commission, or upon some other public tribunal, a supervising power over railway rates, and with power to fix maximum rates and to limit charges where it shall appear to such tribunal that the existing rates shall be unreasonable, and that such orders of the tribunal or commission may be put into effect and shall remain in force until declared by some court to be invalid, substantially in accordance with the recommendation of the President in his message.

The CHAIRMAN. What is it you represent?

Mr. CALL. The citrus fruit interests in California.

The CHAIRMAN. Is there any particular organized association?

Mr. CALL. There is a large central organization which is called the "Southern California Fruit Exchange," which handles about

one-half to 60 per cent of the citrous fruit business, and then there are a large number of scattering organizations owning packing houses and shipping for themselves. About 70 per cent of the orange growers—the citrous fruit growers—have requested me to appear here. I represent about 70 per cent of them.

The CHAIRMAN. You speak by authority for those people?

Mr. CALL. I speak for them.

The CHAIRMAN. You are not a fruit grower or a shipper?

Mr. CALL. I am not a fruit grower, nor am I a shipper, nor do I represent any car line or packing house as such, nor any of those packing-house interests in southern California which are affiliated with the Armour and other car lines. I speak on behalf of the growers.

Senator DOLLIVER. Have you had experience as an attorney in connection with this litigation arising out of these questions?

Mr. CALL. I was going to say that something over seventeen years—during the past seventeen or eighteen years—I have acted for the Government in special employments in a number of railway litigations, not all of them rate cases. Some of them have involved land grants, and some have involved transportation rates for the Army, and some of them have involved rates under the interstate-commerce acts, and other matters that come up have involved railway pools. If it would be of any information to the committee, I could briefly state what those principal litigations were, if the committee desires to know.

Senator FORAKER. Are you employed by the Government now?

Mr. CALL. I am now employed in some special cases. I have never had any general employment from the Government but special litigations relating to railway matters of various kinds.

Senator FORAKER. Are those cases, any of them, cases that were prosecuted by the Interstate Commerce Commission?

Mr. CALL. One of them is an interstate-commerce case.

Senator FORAKER. Is that still pending?

Mr. CALL. That is still pending in the Supreme Court.

Senator FORAKER. What case is that?

Mr. CALL. That is the case of the Interstate Commerce Commission against the Southern Pacific Company and the Santa Fe Company and some of their constituent corporations.

Senator FORAKER. You represent the Interstate Commerce Commission in that case?

Mr. CALL. I represented the Interstate Commerce Commission in the United States circuit court. I prosecuted that case and took all the testimony there and secured an injunction on behalf of the Commission against the railways, but I have not been employed in the Supreme Court. I do not know that I shall appear for the Commission in the Supreme Court.

Senator FORAKER. When did you secure that injunction?

Mr. CALL. That injunction was secured last fall, in the latter part of 1904.

Senator FORAKER. Was a suit brought at that time?

Mr. CALL. Yes.

Senator FORAKER. What was the object of that suit?

Mr. CALL. That suit arose over a controversy between the shippers

and the orange growers in southern California upon complaints filed by them against the railways with the Interstate Commerce Commission, and among other things it was charged that the railways had adopted and put into force a rule or regulation which had been carried into the tariff on file with the Commission, and which was put into shipping contracts, in and by which the railways assumed to absolutely and unqualifiedly control the routing of freight over all lines of railroad beyond the terminals of the initial lines. There was on file before the Commerce Commission the joint tariff, so called, fixing various routes throughout the East for the shipping of freight upon continuous shipments. There were many of those routes that were shown in the joint tariff. For instance, over the Southern Pacific lines east from Ogden and from there to Salt Lake there were lines connecting the Denver and Rio Grande, and then at Chicago a large number of other lines.

Senator FORAKER. Does the Southern Pacific go through Ogden?

Mr. CALL. The Southern Pacific Company, as I suppose the committee knows, is a company organized under the laws of Kentucky, which has leases from two large railroads built under authority of the United States Government as competing lines. One of those lines of railroad is from San Francisco east through Ogden to Omaha, and the other line is from San Francisco, by way of Los Angeles, east toward Galveston. These two lines have made, each of them, leases to the Southern Pacific Company, so that those two lines which were built by virtue of the United States and principally by its aid are today operated by a single company called the "Southern Pacific."

Senator FORAKER. I do not want to interrupt you, but is there any road from Ogden east to Omaha except the Union Pacific?

Mr. CALL. From Salt Lake there are other roads, but from Ogden itself I would not be sure that there are.

Senator FORAKER. Is it not the Union Pacific? Do you mean to tell us the Union Pacific is leased to the Southern?

Mr. CALL. I understand it is in the same control, but not leased.

Senator FORAKER. It really controls the Union Pacific? I have been trying to find that out for a long time.

Mr. CALL. I only know from general report, and that is that certain men own a controlling interest in all those roads. Those are called the "Harriman roads" and are supposed to be owned in the interests of the Standard Oil Company.

The CHAIRMAN. Now, you may proceed with your statement.

Senator FORAKER. Well, I hope you will be more accurate in your other statements than you are in that.

Mr. CALL. I do not undertake to speak from personal knowledge, as I stated. I do not know what the facts are.

I desire to present to the committee the existing situation with respect to the citrus-fruit industry in California, and as affected by the existing railroad rates and conditions, and to show a situation which has arisen there which I think affects the subject under consideration by this committee. In order to do that I would like to briefly go over the development of the citrus-fruit business. The cultivation of citrus fruits, which are generally called oranges—and when we speak of oranges we refer to citrus fruits generally—has grown up within the last twenty years. In 1897 or 1898—in that sea-

son—there were about 14,000 cars of oranges shipped. In the year 1900 there were about 22,000 cars, and in the season of 1903 and 1904 about 25,000 to 27,000 cars. In the present season there will be about 30,000 cars, or a little over. The growth of the citrus-fruit business has been large and quite rapid; but one reason for that is that when the rates on citrus fruits were established by the railways, citrus fruit was worth in California from $4 to $5 a box. That was about twenty years ago. That continued at those quite comparatively high prices until more recent years. It takes about eight years to put an orange grove in cultivation, in first-class producing condition; so that groves that were planted and are being brought into bearing and were started at times when the business was profitable have been brought into bearing and production at a time when there is absolutely no profit in the business, in view of the existing conditions. I mention that because it accounts for the increased shipments under adverse conditions.

Senator FORAKER. How much per box is that fruit worth now?

Mr. CALL. I will give you the figures on that directly. In a case before the Interstate Commerce Commission involving the question of the reasonableness of the rates for transporting citrus fruits the Commission made certain findings that were established by voluminous testimony furnished by the carriers, as well as by the orange growers; and among other things they found these facts: That the actual cost of placing groves of oranges in bearing at seven to eight years old is $1,000 an acre, and that the actual cost of producing a box of oranges which weighs about 80 pounds, and putting it aboard the cars, was $1.10 a box. That is what it costs the grower to put the fruit aboard the cars.

Senator FORAKER. At this time?

Mr. CALL. At this time, and it has been the same for several years. The railroad rate, which was established some twenty years ago, is $1.25 a hundred from southern California to points east of the Rocky Mountains. It is what is called a blanket rate, and the center of distribution of that freight is a couple of hundred miles east of Chicago, about 2,500 or 2,700 miles of haul. That rate of $1.25 a hundred amounts to 90 cents a box, and the charge for refrigeration to the central point of distribution is $70 to $80 a car, but all the fruit is not refrigerated. In round numbers, the cost of laying down that fruit in the eastern market to the grower is in the neighborhood of $2 to $2.10 a box. Now, I would like to impress upon the committee from these figures of the Commission that the cost of those oranges laid down in the market is $2.10 a box. The average price received in the market for oranges during the season of 1902 and 1903 was $2.20 a box, which, if there had been no losses en route, and nothing for handling, for commissions, would have given the orange growers of California about 10 cents a box, and would have given the carriers and the car lines about $1 a box.

In 1903 and 1904 the average price was $1.97 and 7 mills a box. In the season of 1904 and 1905, the present season, the price has averaged $2.13 a box. Now, the freight which this business pays to the carriers—and when I say to the carriers I mean the car lines also—is approximately $400 a car, and for the 30,000 cars that amounts to

$12,000,000, which the orange growers of southern California are contributing to the carriers and car lines, and for three years their profits have not been over 10 cents a box, or, perhaps, we will say, about a million dollars a year—one-tenth as much.

Senator CULLOM. The profits of the producers?

Mr. CALL. The producers' profits have been perhaps one-tenth as much as the amount which has gone to the car lines and to the railways. In this hearing before the Interstate Commerce Commission there was much testimony taken upon the subject as to the reasonableness of the rate and what that rate ought to be. The Supreme Court of the United States had decided in a series of cases—the first definite decision was in the 167 U. S., followed in the 168 U. S.—that the Interstate Commerce Commission had no power to prescribe a schedule of rates and that the power to fix rates was a legislative function, and not a judicial function; that the Interstate Commerce Commission had not been given by law any legislative functions, and that the Commission could not accomplish by indirection what the law had not empowered it directly to do. So that the Commission was left utterly without power when they had investigated a rate to establish or to determine what a reasonable rate should be and to enforce that rate.

Notwithstanding those decisions, it seems to have been in contemplation that the Commission should investigate and take testimony and make findings concerning the reasonableness of rates generally, and in that view the Commission went on to determine the reasonableness of the rates upon oranges from southern California to eastern points. After taking a great deal of testimony, which included considerations as to the value of the railways, as to their gross earnings, as to their operating expenses and their net earnings, and comparisons with earnings of other roads generally, and a calculation as to increase of earnings and as to the actual worth of railroads, the Commission found that the rate was unreasonable and excessive. They did not order it reduced, because they had no such power, but they found that the charge of $1.25 per hundred for freight was excessive to the amount of 15 cents a hundred; that $1.10 was as much as they could charge. That was not very satisfactory to the growers. They thought that the rate should not be over 75 cents a hundred, but if the findings of the Commission could have been carried into effect it would have resulted in an increased profit to the growers of about $1,500,000 in a season. In place of leaving the business in a disastrous condition it would have saved their industry; but those orders could not be carried into effect. The railroads refused to recognize the order.

The CHAIRMAN. What sort of an order did they make?

Mr. CALL. The Commission having made its findings that anything over $1.10 was unreasonable, made this, but it was all that they could do after four years of litigation, or thereabouts—finding in the case of Consolidated Forwarding Company *v.* Southern Pacific Company et al., after preliminary recitals:

"That in accordance with said report and opinion the rate of $1.25 per 100 pounds maintained and enforced by the defendants, the Southern Pacific Railway Company, the Atchison, Topeka and Santa

Fe Railway Company, the Santa Fe Pacific Railway Company, and the Southern California Railway Company, for the transportation of oranges in carloads from shipping stations in southern California to all destination points beyond and east of the Missouri River, is excessive, unreasonable, and unjust and in violation of the provisions of the act to regulate commerce, and that said defendants be, and each of them is hereby, notified and required to cease and desist on or before the 1st day of April, 1905, from maintaining or enforcing the said unlawful rate of $1.25 per hundred pounds for the transportation of oranges, as aforesaid."

Now, that is the order.

The CHAIRMAN. Do you maintain that they have no power to make that order?

Mr. CALL. I say that that is the only order they could make, that the railroad company shall not charge $1.25 a hundred, that they could go no further than that; but they can not order the railways to reduce the rate to the amount which the Commission found to be reasonable. In other words, if the railroad companies should reduce their rate one-hundredth part of a cent, it would be a compliance with that order.

Senator DOLLIVER. What did the railways actually do in that case?

Mr. CALL. They refused to obey it at all, and a suit has just been filed to enforce this order.

Senator CARMACK. Do you mean that they continued to maintain the old rates?

Mr. CALL. Yes.

Senator CARMACK. In defiance of the order of the Commission?

Mr. CALL. Yes.

Senator DOLLIVER. They have a right to do that under the original interstate-commerce act until the court passes upon it.

Mr. CALL. They utterly disregarded the order and the point I am trying to impress upon the committee is that the Interstate Commerce Commission has not been given power and has not the power to carry into effect their decision in this case, that the rate is excessive and unreasonable and unjust.

Senator CARMACK. Of course they can not fix the rate.

Mr. CALL. No, they can not fix any rate. All they can do is to say that the existing rate is unjust, and that is what they have done here.

Senator CULLOM. Did they find any fault with refrigeration charges?

Mr. CALL. That was one of the grounds of complaint before the Interstate Commerce Commission, and while the subject was under investigation by the Commission entirely different arrangements were made by both lines of railroad, and the charges were changed, and it left it in such a condition that on that hearing the Commission did not make any order in respect to it.

Senator CULLOM. Didn't they find that the charge for refrigeration was not unreasonable?

Mr. CALL. Well, I think that that is about the effect of it. I had nothing to do with the case before the Commission while that was gone into, when the question of refrigeration was tried out. I was not in any way connected with it at that time, and when I became connected with the litigation new contracts had been substituted for

the old ones and the rates had been changed and there were new parties in interest. For instance, about two or three years ago the Santa Fe Railroad Company, for its system, organized a car line. It was organized by the officials of the Santa Fe Company and on behalf of the Santa Fe Railway Company, and has exclusive arrangements to carry all fruit and refrigerated fruit, ventilated fruit, over the system of the Santa Fe Railway Company, and no other car lines are allowed over that system. The car line fixes the cost of refrigeration, and the Southern Pacific Company had made a contract with the Armour Car Lines giving to that company an exclusive contract to transport over that system at prices to be determined by the car lines, and said contract was in force.

Senator CULLOM. What I wished to call your attention to was the question of whether or not the Commission in that case did not say that, so far as the charge by the car-line company was concerned, they were reasonable and not unreasonable.

Mr. CALL. I have a copy of the findings and order of the Commission here, and it would be, I think, of some value to the committee if it were filed in this case. I can find it in a few moments.

Senator FORAKER. Haven't they got a syllabus?

Mr. CALL. No. They give the charges here for refrigeration for different years. Here, I have found it. The Commission said that "in view of the reductions in the refrigerating charges since the first hearing of these cases and insufficiency of evidence as to icing cars, we do not feel justified in condemning the present refrigerator charges as unreasonable."

Senator CULLOM. I thought it was there.

Mr. CALL. Yes, it is there; and it was a subject that I did not take any testimony on or pay any attention to, because it was gone into before the date of my connection with the lawsuits.

Senator FORAKER. What is the date of that?

Mr. CALL. January 11, 1905.

Senator FORAKER. And that was pending about four years?

Mr. CALL. It was pending very nearly four years, but there were a large number of questions that came up on the first hearing before I was interested in the matter, and the proof was insufficient to enable the Commission to determine it, and they made a partial report upon it and continued the rest of the hearing for further testimony.

Senator DOLLIVER. You say that case is now pending in the circuit court?

Mr. CALL. Yes. I would like to tell you about this case.

Senator DOLLIVER. I would like to ask you a question about it. What reason have you for saying that if the circuit court by solemn decree should affirm that order of the Interstate Commerce Commission that the railroads would not obey the decree substantially?

Mr. CALL. The order of the Commission is for the railroad companies to cease and desist from charging $1.25 a hundred for transporting citrus fruit, and if that order were made a final order by the court it would result in requiring the railroad company to make some reduction from $1.25.

Senator FORAKER. What reason have you for supposing that they would not treat that solemn decree of the court as a matter to be observed substantially?

Mr. CALL. Because the injunction would go no further than the order. The injunction could not go any further than the order of the Commission, and they say that $1.25 is unreasonable, but it does not prescribe what is a reasonable charge.

Senator DOLLIVER. Suppose the order of the court should suggest what reduction from that maximum would be regarded as reasonable?

Mr. CALL. That involves the consideration of a constitutional question. The Supreme Court has said, and has repeated it many times, that the fixing of a railway rate for the future is a legislative function, and it is a function that has been conferred upon Congress by the Constitution.

Senator DOLLIVER. But suppose the court should not undertake to deal with the future at all, but to deal with the past and with the present, and in condemning a given rate as unreasonable should find what is or has been a reasonable rate in such a case, in this exact case, without dealing with the future at all?

Mr. CALL. The fixing of the rate, I take it—I understand the court has so decided—is a legislative function.

Senator DOLLIVER. I know the fixing of the rate for the future is, but suppose they should confine their decree to a statement of what a reasonable rate in that case is, without undertaking to put it into effect in the future or telling what it ought to be in the future?

Mr. CALL. The court could determine whether the order of the Commission was valid, was a lawful order or otherwise, and if they determined that it was a lawful order they would require its observation; but I do not understand that under the law—that there is no law by which the court can do anything more than either enforce the order of the Commission or refuse to enforce it. They can not create a new case there concerning rates and make an order in reference to it under the existing law.

Senator DOLLIVER. Congress could confer that upon the court?

Mr. CALL. I suppose that Congress could confer upon the court the power to determine what the charge should have been, and perhaps require the railways to repay overcharges or establish a liability anyway; but that would not have anything to do with the rate for the future, because they would not have prescribed a rate.

Senator KEAN. If they had to pay damages, I should think they would.

Mr. CALL. It would require a long process to get through with it, and under the existing laws the railways have the power to fix the rate.

Senator FORAKER. Have you there the form of the order made in that case by the Interstate Commerce Commission?

Mr. CALL. Yes; it is here, and I will hand it to you. The Supreme Court of the United States has held that under the power to regulate commerce is included and comprehended the power to make rates and to establish them, and in every instance where a State has attempted to fix rates on interstate commerce such acts have been nullified by the Federal courts, because the rate-making power is a regulation of commerce. Now, under the existing laws that power which has been given to Congress to regulate commerce, including the power to fix rates, has been conferred upon railway corporations.

They are exercising that governmental function to fix rates, which the Supreme Court of the United States says is a regulation of commerce. In exercising the power to fix rates and to collect them the railways are exercising a franchise conferred by the United States for a governmental power, for a national use, and they stand in the same relation to the United States Government as the Interstate Commerce Commission does itself. Without authority from Congress conferring the power to fix rates and to collect tolls a railway company would have no right whatever to fix rates for interstate transportation. The United States has created those corporations for a governmental purpose and conferred upon them a sovereign national power which is no different in any respect than the power which Congress is proposing to confer, or considering conferring, upon the Interstate Commerce Commission. They are equal public agencies of the United States.

Senator CULLOM. I understand you to say that if the railway company builds a road between several of the States they have no right to fix rates for the transportation at all?

Mr. CALL. Without authority from the State.

Senator CULLOM. Without authority from Congress.

Mr. CALL. That is, interstate commerce.

Senator CULLOM. Do you regard that as sound?

Mr. CALL. I will give an extract from the decision of the Supreme Court of the United States in a case that arose, like a great many other railway cases have arisen, that whenever a railway company wishes to escape a State tax or to have its road opened against a mob or to control any other public function which it has received from Congress it takes the position that it is a national agency, exercising national functions, and that it is beyond the control of State legislation for those reasons.

Senator CULLOM. That is, carrying the mail.

Mr. CALL. Yes; and for other purposes. Now, in the Pacific Railroad Case, in the 127 U. S., page 39, the court said:

> The power to authorize individuals or corporations to construct national highways and bridges from State to State is essential to the complete control and regulation of the interstate commerce. Without authority in Congress to establish such highways and bridges it would be without authority to regulate one of the most important adjuncts of commerce. A franchise is a right, privilege, or power of public concern which ought not to be exercised by private individuals at mere will or pleasure, but should be reserved for public control and administration either by a government directly or by public agents. No private person can establish a highway or charge tolls for the use of the same without authority from the legislature, direct or derived. These are franchises.

In a later case of the United States against the Union Pacific Railway Company, in the 160 U. S., at page 1, it is held that the attempt of the Union Pacific Railway to transfer to the Western Union Telegraph Company a telegraph franchise or the right to operate a telegraph line along that railroad was void, that it was without authority of Congress, and that Congress alone could authorize that franchise to be alienated or transferred, because it was a public franchise exercised under the United States.

Senator DOLLIVER. In a case of the Union Pacific Railroad, it was a Federal corporation.

Mr. CALL. Yes; but in the other cases they were not. In the

Central Pacific Railroad cases they were State corporations. In a number of cases that originated in Iowa, and which were tried before Judge Shiras, individuals attempted to recover from railway companies overcharges for transporting grain, I think it was, and live stock to Chicago. Judge Shiras held that the power to fix the tariffs, to regulate the charges upon those railroads, had been conferred by Congress, through the interstate-commerce acts, upon the railways, and that when those railways filed their tariffs with the Interstate Commerce Commission they become the legal and established tariffs; and that where an individual sought to recover overcharges for that transportation he could not go back of the tariff; that it was impossible that there could be submitted to a jury the question of the reasonableness of a railroad rate; that that had been exercised through the power that Congress had authorized to exercise it.

Senator DOLLIVER. Do you regard that as good law?

Mr. CALL. I think that is the law.

Senator DOLLIVER. That these public rates constitute an evidence of legality that can not be disputed?

Mr. CALL. Yes; that they, in the absence of fraud or collusion, or for some other reason which would invalidate them—unless it is shown that they are invalid for some reason the law would make them so—that those rates are conclusive as against the public; that there is not any power in this Government through any of their agencies to reduce a railroad rate to any given point or to recover overcharge.

Senator CLAPP. When was this decision made that you refer to?

Mr. CALL. I think it was about ten years ago. I can not give the time exactly. Those are the only cases I have ever known where an individual attempted to recover overcharges from an interstate-commerce railroad, where no greater charge had been exacted than had been fixed in the tariffs. If there has been any other such cases I have never seen them. Judge Shiras held, and I think properly, that the power to fix those rates had been conferred upon the railroads; that that rate-making power, which is vested by the Constitution in the Congress of the United States, has in effect been conferred upon the railroads themselves, and when they exercise it no one can go behind the rate so fixed.

Senator DOLLIVER. What does this language in section 15 of the interstate-commerce act mean, when it authorizes a complaint to be made against a public rate as unreasonable and unjust.

Mr. CALL. That seems to mean that the Commission shall take up the investigation of the reasonableness of the rate, and seems to contemplate the Commission should pass upon it—should determine whether it was reasonable or not.

Senator DOLLIVER. And collect the overcharge?

Mr. CALL. No; there is no provision made for collecting an overcharge or for establishing any rate in lieu of the one fixed in this tariff.

Senator DOLLIVER. There seems to be the provision for finding damages that have been sustained by the party or parties complaining or aggrieved in consequence of that violation of the law. The law requires the rate to be reasonable. And if they find it to be unreasonable this section 15 seems to contemplate that they may find damages.

Mr. CALL. The Commission?

Senator DOLLIVER. Yes.

Mr. CALL. Well, that power has never been exercised to my knowledge. It never has been attempted.

Senator CULLOM. The Commission has given damages in some instances.

Mr. CALL. The Senator may know such a case, but I never have known a case where that has been done. I do not understand that it could be done if the charge was within the tariff.

Senator DOLLIVER. Now, if that could be done in your orange case, they could not only find that rate was unreasonable, but they could have stated what a reasonable rate would have been and proceeded against these people for this $1,500,000 that you talk about.

Mr. CALL. The Commission, of course, could not be given power to enter judgment. I suppose that quasi judicial powers could be conferred upon the Commission by which it could do something more than make findings which it could not enforce; but I do not understand that they have any such power that they could enforce their orders either in reference to rates or an overcharge.

Senator DOLLIVER. Well, that is a very interesting section, that section 15 of the original act.

Mr. CALL. Yes. Well, there may be some construction put upon that that has never been placed upon it. If individuals could recover overcharges under that section before the Commission, they certainly would not need to go into the courts to do it.

Senator FORAKER. Your contention is that what the court held was that the rate fixed by the railroad was the lawful rate as against all individual shippers?

Mr. CALL. Yes.

Senator FORAKER. But that does not cut off the Interstate Commerce Commission from entertaining the complaint and finding that it is unreasonable, but until they take that proceeding it stands.

Mr. CALL. I understand that is the case.

Senator FORAKER. And what the court held is that the interstate-commerce law prohibits the making of a rate that is unreasonable, and the railroad, when it makes a rate, presumably makes a reasonable rate.

Mr. CALL. Yes.

Senator FORAKER. And that stands as a lawful rate because reasonable as against all private complainants, but if anybody wants to complain of it they can go before the Interstate Commerce Commission and tell that Commission it is unreasonable, but until that is done it is presumed to be a reasonable rate.

Mr. CALL. That is my understanding; the Commission can not reduce, nor can any other man.

Senator FORAKER. They can find the rate an unlawful rate, and don't they very frequently state in their orders that in their opinion it is an unreasonable rate, and that anything more than a figure which it names is unreasonable? Does not the Commission often make that sort of a finding?

Mr. CALL. If the Commission has the power to declare that an existing rate is unreasonable and unjust it may order the carrier to cease and desist from exacting that unreasonable charge or unreasonable practice, but——

Senator FORAKER. They can not substitute any other rate.

Mr. CALL. It can not substitute any other rate because that appears to be a legislative function.

Senator CLAPP. You do not answer Senator Foraker's question. Is it not the practice of the Commission to suggest a rate to take the place of the one condemned?

Mr. CALL. I understand that the Commission not only suggested it formerly, but they assumed that they had the power to substitute a rate, but when they did that in a number of cases the Supreme Court held they acted without authority.

Senator CLAPP. Since 1897, since the Supreme Court held they had no authority, has it not been the practice of the Commission when they have condemned a given rate to suggest what in their opinion would be a reasonable rate in lieu of that?

Mr. CALL. I could not say what their general practice has been. In this particular case I am familiar with what the Commission did. They made a finding, as I stated, that $1.10 a hundred was a reasonable rate, and anything more than that was unreasonable; but in the order they did not attempt to require a compliance with it, because they had no authority to do so.

In the trial of the routing case, the case of the Interstate Commerce Commission against the Southern Pacific Company and the Santa Fe Railway Company, the Commission attempted to enjoin the railways from putting into force and effect the order and regulation which I speak of and by which the carriers as initial lines undertook to route citrus fruits. The Commission had found that that regulation was discriminating, and also that it tended to carry into effect a traffic pool between the railways. Now, the railway companies, in their answers in those cases, denied that there was any traffic pool between them, or that in any way tended to carry into effect such a traffic pool, and insisted on a right to route freight over the various routes to the East.

The citrus people felt very deeply aggrieved at the action of the railways in attempting to route their freight. They claimed that competition between the lines had been destroyed. They also claimed that by reason of lack of any competition that the time in route had been extended over such a period that the fruit was greatly injured in transit, and they also claimed that they had lost control of their fruit markets. They did not know where it had gone to, that it would go over lines which would affect it by reason of the weather, and various other things; and in the trial of that case I secured from the railway companies and introduced into the evidence, after I had brought some proceedings in contempt, a percentage table, or it was called "routing instructions"—a confidential order issued by the traffic managers of the Southern Pacific and similar orders issued by the Santa Fe, directing that all the freight in citrus fruit should be routed over the various connecting lines of these two systems by certain percentages, giving to each line a percentage. There was the percentage of the Pennsylvania Railway east from Chicago and from St. Louis. There was the Baltimore and Ohio percentages, and the Illinois Central, and all of the lines in the East had their percentages that were carried into that sheet. I proved that that percentage agreement had been acted upon for more than three years, and that the freight had been regularly divided between all those lines.

The testimony also showed that the Southern Pacific and the

Santa Fe systems had a method for dividing the freight as between them, as initial carriers, each taking 50 per cent. The traffic manager for the Santa Fe testified that the way that was accomplished was this: He said that all the Santa Fe had to move over and through the Santa Fe dispatch car lines, and all the Southern Pacific freight had to go through the Armour lines. He said now at the beginning of the seanson that the Southern Pacific and Santa Fe agents would examine the orange crop and ascertain as nearly as they could estimate, with the assistance of the growers, what the production was for the season. Then they would determine how many cars it would take to transport that fruit. Then they would make monthly orders or periodical orders. The Santa Fe would order so many cars and the Southern Pacific an equal number, so that when the Santa Fe cars were all exhausted, that being the popular line and more than 70 per cent of the fruit naturally going that way—when the Santa Fe cars were exhausted, the shippers would have to use the other cars, the Southern Pacific cars, and they would be switched over on the Santa Fe lines, and loaded and sent out over the Southern Pacific lines; and if the Southern Pacific got short of cars, that would force the traffic over the Santa Fe, and it would come out over those lines.

The CHAIRMAN. What year was that?

Mr. CALL. During last year, but that had been enforced for three years.

The CHAIRMAN. Was it not a combination against the Sherman antitrust law?

Mr. CALL. I have no doubt of that.

The CHAIRMAN. Why was it not prosecuted?

Mr. CALL. You might ask me why any violations of the laws have been or have not been prosecuted in the United States.

The CHAIRMAN. If they work a hardship to shippers, why don't they take it right into the court?

Mr. CALL. They could not initiate a criminal proceeding.

The CHAIRMAN. I suppose you are citing this to show this is judicial?

Mr. CALL. Yes; we attempted to enjoin it. We were bringing this suit to enjoin a continuance of that routing rule and arrangement, in fact a traffic pool, and we tried to get an injunction.

The CHAIRMAN. You actually took the case into court?

Mr. CALL. Yes.

The CHAIRMAN. What court?

Mr. CALL. The United States circuit court for the southern district of California.

The CHAIRMAN. What became of the suit?

Mr. CALL. I was going to tell you. We made that proof in that case and showed that there was a division in that freight, and that it had been a regular division in force for several years, and we showed also that the way that tariff was made up, the way the railway companies exercised the power to fix the rates, and which the public supposed and which the court supposed was done independently by all roads and under fair competition, was by an association of agents, in which all of these carriers got together at San Francisco or New York or Chicago and fixed up a tariff, not only on citrus fruit, but on all commodities. We found that they met there—

nearly 200 lines of railway, controlling all the transcontinental freight and all the freight between the Missouri River and the East, between lake ports and river ports and the West, and covering nearly all the mileage of the country—that those people got together there and fixed up this rate through a joint agent, who was the agent of all the roads, and put into effect a given tariff covering all competitive points.

The CHAIRMAN. I am interested in that statement of facts. What did the courts do?

Mr. CALL. Judge Welburn, of the United States circuit court, said that that in itself was a violation of the Sherman Act. He also thought that that in itself was a violation of the pooling act.

Senator DOLLIVER. You mean the pooling clause of the interstate-commerce act.

Mr. CALL. Yes; the pooling clause of the interstate-commerce act. Now, if you will turn to the Century Dictionary, you will find that a pool is not necessarily a division of freight, but it is a fixing of a rate upon any commodity by a combination of persons acting simultaneously, by which the price is maintained, and does not involve a division of the freight. We argued that case before Judge Welburn, and he decided it in favor of the complainants. He said it was unnecessary for him to consider any question of discrimination in that case; that he did not rest the case necessarily upon any matter of discrimination; that there was a freight pool between these roads, and that that routing arrangement which we complained of and which we did not know at first was a part of the freight pool—we did not suspect it—that that in itself was a means by which this freight pool was consummated, and he enjoined the carriers from putting that into effect or further carrying out that practice. Well, from that decision the defendants appealed to the Supreme Court of the United States, and under the provisions of the act of February 11—I think it is—1903, it went direct to the Supreme Court and not to the court of appeals.

Senator FORAKER. It is pending there now?

Mr. CALL. It is pending there now. There has been no attempt to advance it on the docket, although we were quite willing to take it up at once. Pending that appeal and at the time the appeal was taken, the carriers attempted to secure a supersedeas—a stay of proceedings pending the appeal—which would have enabled them to go on with this routing arrangement; but section 16 of the interstate-commerce act seemed to contemplate that an appeal—in fact, it provides—shall not operate as a supersedeas.

The carriers claimed that under the general power of a court of equity it had the inherent power to suspend the execution of a decree pending appeal, and upon that broad power of a court of equity the able attorneys for the carriers asked the court to supersede this decree, but the court refused to supersede it for the reason that to suspend that decree would be to put into effect this tariff of rates, which had been formed by a combination, and would carry into effect a pool of freight. He stated that he would not allow his court to be a party to such a transaction. Understand, I am not trying to give the exact language of the court in any of this matter, but attempting to state the substance of the decision as I remember it.

Senator FORAKER. So the injunction did go into effect?

Mr. CALL. Yes.

Senator FORAKER. What is the effect on that b

Mr. CALL. I am very glad you asked me tha president and manager of the Southern Califo just before I left Los Angeles, what the effect ha tion so far this year. He said it had saved the saved the orange industry. He said the time shortened three to four days.

Senator FORAKER. How did it shorten the ti

Mr. CALL. Because under the operations of t lines would not facilitate the rapid transportati were getting their percentages, and they w whether they gave good service or not, and the all became stagnated, and the time grew longe fruit decayed. Mr. Drehr, a very prominent grower, has sent me a statement to this effect: Th of the delay in transit and the decay of fruit, th had amounted to 25 per cent of the entire c counting $12,000,000 to the railroads and $12.0 the oranges, makes a total of $24,000,000. So th loss, according to his statement, by reason of t

Senator FORAKER. If the Supreme Court aff you have found your remedy?

Mr. CALL. For that; yes, sir. I have found that particular pool. Now, that is one thing nate to me. After we had taken all of this done so at great trouble and time; had proven natural condition for those railroads to pool; t istic of them to evade the law—a regular cou we could not enjoin them from making any thing we could do was, in effect, to enjoin the business in that particular way, and not in just simply prevented them from dividing that

Senator DOLLIVER. What was the reason tha enlarged that complaint?

Mr. CALL. The idea of the court seemed to m province of a court of equity to establish a cri by injunction to make a general rule of action; enjoin irreparable injury that was threatened stantially in which this was threatened, it woul broad enough to cover anything more than the plained of; that other methods of pooling oug the domain of criminal procedure.

The CHAIRMAN. Did these pools or combinat in the transit of the fruit? How would tha would that prevent rapid transportation?

Mr. CALL. I will try and explain that.

The CHAIRMAN. It is to the interest of the freight through as soon as possible, is it not?

Mr. CALL. Yes.

The CHAIRMAN. Do you think the railroads delay?

Mr. CALL. This citrus-fruit freight is supposed to be a sort of specialty freight. The rate is high—$1.25 a hundred means a cent a ton per mile. It is largely in excess of the average freight throughout the country, although it is a haul of 2,500 miles, and in trainload lots. It is not the ordinary short haul.

Senator KEAN. Does not the bulk of it go 4,000 miles?

Mr. CALL. The average haul was shown to be about 2,500 miles.

Senator KEAN. You get the same price at Chicago that you do in New York?

Mr. CALL. Yes; the same price, but the average haul from southern California to the average center of distribution is about 2,500 miles. There is nearly half of the fruit that goes east of Chicago.

Senator KEAN. In figuring that out I want to know the weight of the refrigerator cars or the ordinary car.

Mr. CALL. The weight of the car?

Senator KEAN. Yes.

Mr. CALL. The minimum carload weight is 26,000 pounds. Formerly it was 22,000 pounds, and larger cars have been put on, and for those larger cars the growers and packers can load 26,000 pounds without damaging the fruit by overcrowding. But there is about 25 per cent, as I am informed, to 33 per cent of the cars of the old make, smaller size, into which the growers must pack their fruit or pay the minimum carload charge; and when they use those cars great losses occur from overpacking by decay, and if they do not pack it full they will have to pay the minimum, which increases the rates, and that is one of the things that the growers complain of.

Senator KEAN. In figuring out the weight do you include the weight of the ice also?

Mr. CALL. I think not. The chairman asked me a question a moment ago that I would like to answer. On the lines of railroad of the Santa Fe, for instance, and running east to Chicago, at Chicago there is a large number of railways that connect in running to the East—to eastern points—and those lines or routes are all laid down in the tariff on file with the Commission as lines and routes open to the $1.25 rates. The orange business requires quick transportation. It is supposed to have special transportation rights over the road; that it has a quick service over slow and imperishable commodities; that they must yield to it so that it may get through quickly. There is an orange schedule which used to be followed pretty closely before this pool was established, and in which the time to Chicago was about four days and a half, and to New York about six or six and a half days; something like that. When this pool went into effect all these lines in the East were getting their percentage of the business whether they gave good service or not. They were no longer required to sidetrack their freight and to hurry the orange business along. They would get the freight under that percentage sheet whether they gave good service or bad service, good time or bad time, and the result was, as we actually proved in that case, that the time was extended from three to four days—nearly three days to Chicago, and much more to the East by reason of that fact, there being a total destruction of competition.

Senator FORAKER. I do not understand you to say that a division of freight was agreed upon, but simply rates of freight? The rep-

resentatives of the different roads got together and agreed what th rates should be?

Mr. CALL. There are three things that we showed there. There ar three instruments that we have in that case. First is the arrange ment fixing the rates at a uniform rate between all competitiv and noncompetitive points between these competitive lines of rail roads. That is one paper. That is called a tariff, and is filed wit the Commission. The next paper we got in evidence was called "division sheet." That was an arrangement or agreement by whic the percentage of the haul was divided between the connecting line as though it was on one continuous haul. Each one got a certain pro portion of the freight for that haul. Now, the third paper that w put in evidence there was the percentage table, which showed the per centage of the freight which each line was to haul. Those thre documents are in evidence in that case.

Senator FORAKER. Why do you cite the definition of pooling a given in the Century Dictionary to show that it did not include division of the amounts collected?

Mr. CALL. I was referring to that in its application to the tari which had been agreed upon—the joint tariff which includes al freight, and not oranges alone. This division of freight, so far a we know, was only applied to the citrus-fruit crop, and this tari which covers all freight, which all the roads had joined into, appeare to be in itself not only a violation of the Sherman Act, but a violatio of the pooling provisions of section 5 and embraced all freight.

Senator FORAKER. I understand you now.

Mr. CALL. Mr. Chairman and gentlemen, I desire to expedite thi hearing as much as possible on account of the committee being presse for time. I have prepared here a paper which I would like to hav printed as a supplement to my oral statement.

Senator KEAN. I think there is no objection to that.

The statement referred to is as follows:

SUPPLEMENTAL STATEMENT OF MR. CALL.

THE CITRUS-FRUIT INDUSTRY IN SOUTHERN CALIFORNIA.

In speaking of oranges there is usually included in the term all citrus fruit.

In the season of 1897–98 southern California produced about 14,00 cars of oranges, and in the season of 1900–1901, 22,392 cars; in the season of 1903–4 there was produced 25,194 cars, and in the season of 1904–5 about 30,000 cars.

In the case of Consolidated Forwarding Company *v.* Southern Pacific Company et al., decided by the Interstate Commerce Commission on February 11, 1905, the history of the orange industry is reviewed and findings are made as to the cost of orange groves, cost of producing oranges f. o. b., freight rates to markets for many years, and other important facts.

After taking voluminous testimony the Commission found that the actual cost to the grower of oranges is $1.10 per box; and that the freight to eastern markets is $1.25 per hundred, or 90 cents a box, making an actual cost to the grower in the market of $2 a box, to

which is added the cost of refrigeration en route, exacted by car lines, which varies at different times and under different circumstances.

The Commission also found that the average price received in the markets for oranges in the season of 1902–3 was $2.20 per box, leaving a profit of 20 cents a box to the growers who actually shipped, the losses from frost, disease, and other causes not being considered. In 1903–4 the price was $1.97 a box, and in 1904–5 was $2.13 a box.

In the present season the railways and the car lines will receive from the orange growers about $400 per car, on an average, for over 30,000 cars, making a total amount of over $12,000,000, and in the production of the oranges for this year the growers will have paid, mostly for labor, an additional sum of about $14,000,000.

The present railroad rate on oranges was established some twenty years ago, since which time the minimum load per car has been largely increased, resulting in overpacking and decay, and the time in transit has been greatly increased during the past five years, as found by the Commission, which works an actual increase in the rate to the grower which is large, but which can not be precisely determined.

The damages to orange growers during last season from delay in transit, overcrowding of cars by reason of establishing the minimum carload at 26,000 pounds, and the resulting loss of market by reason of the marketing of large quantities of damaged fruit has been intelligently estimated at one-fourth of the entire crop, or over $6,000,000 for that season.

The Commission also decided in the Orange Case that the present railway rate of $1.25 a hundred was unreasonable and excessive, and that a reasonable rate is $1.10, but the railways have refused to obey the order and decision of the Commission, and there is no power in the law to compel a compliance with it.

PRIVATE CAR-LINE MONOPOLY.

There is a practical monopoly in the ventilator and refrigerator car service in handling and carrying citrus fruit from southern California to eastern markets.

The entire fruit business of the Santa Fe Railway is handled in cars furnished by the Santa Fe Despatch, and the entire business of the Southern Pacific system is handled through the Armour Car Lines.

These two car-line systems have a common tariff of rates for refrigeration which they themselves fix and establish, and the fruit business is equally divided between the two lines, so that each gets a half, and this result is accomplished by a division of equipment, each furnishing from time to time only half of the equipment required to move the crop, and thus forcing the business over the other line where there is a shortage on one line.

The railroad companies also are parties to this division of business and pool, and this was established in the findings of the Commerce Commission in its decision of February 11, 1905, in the orange cases, and in this connection I would refer to pages 608 to 614 of said report of the Commission.

The Armour interests, which control the Armour Car Lines, are

also interested in buying, packing, and selling citrus fruit through the organization in southern California known as the "Citrus Union."

This statement will be denied by the Armour interests, and they will probably attempt to claim that the Armour Car Lines is a different corporation from the Citrus Union and other packing interests in southern California, but I will undertake to say to this committee that if the Armour interests will make a full disclosure of their books and transactions relating to the orange industry, I can prove to the satisfaction of this committee or of any court that the Armour interests are engaged in the fruit business in southern California, as they are in Michigan, in Florida, and in other fruit centers.

It is a most unreasonable advantage to a private-car line and a disastrous disadvantage to a fruit grower to give to a grower's competitors the power to monopolize the furnishing and fixing of rates for refrigerator cars. It is quite plain that the burden which is thereby cast upon the outside growers and the opportunity to monopolize the market will be disastrous to such outside growers.

The law is quite well settled that a railway company, being a common carrier, can not discharge itself from any duty which it owes to the public in the caring for and carriage of persons and property by contracts with other corporations or agencies for the furnishing of equipment, such as express cars, sleeping cars, and fruit cars.

Where the carrier selects another company to furnish or operate equipment the company so furnishing or operating it becomes a mere agent of the carrier, no different in principle from any other individual agent, such as a conductor.

There are several recent decisions of the Interstate Commerce Commission holding that it has supervision, under the commerce act, over fruit-car lines operating under contracts with railways where the railway furnishes no other equipment and does not allow the public to do so. The following cases thoroughly illustrate the principle: Pennsylvania Company *v.* Roy (102 U. S., 451, at p. 457); Express Cases (117 U. S., 1, at p. 24); Johnson *v.* Southern Pacific Company, U. S. Supreme Court, decided December 19, 1904.

The provisions of section 1 of the Esch-Townsend bill are broad and comprehensive enough to include all rates established by car lines and other rules and practices in reference to such car lines.

These car lines are engaged in interstate commerce, whether regarded as carriers or mere custodians of freight while in transit, and this was the effect of the decision in Johnson *v.* Southern Pacific Company, supra.

RAILWAY RATES.

The two railroads leading out of southern California are the Southern Pacific and Santa Fe. The San Pedro and Salt Lake Railroad, generally known as the Southern Pacific cut-off, will soon be in operation.

The net income per mile of the Southern Pacific in 1895 was $2,269, and in 1903 was $4,037 per mile. In 1903 the net income per mile of the Santa Fe lines had increased to over $3,300 per mile. In 1903

the percentage of operating expenses to earnings upon both the Southern Pacific and Santa Fe roads was about 63 per cent, leaving about 37 per cent net.

These figures are taken from the reports filed by the railways themselves, but by the method of bookkeeping employed are grossly unfair toward the public. They are unfair in not including the earnings of subsidiary corporations which occupy the railways and which are largely supported at the expense of the railways themselves, such as the express business, the sleeping-car business, the telegraph business, and the car-line business.

I estimate that the gross earnings of the subsidiary corporations above mentioned are equal to one-tenth at least of the earnings of the railways as returned to the Commission, and that more than half of the gross is net profits.

If the railways can farm out a part of the business to side corporations it can farm out all of it, thereby showing in their returns enormous operating expenses without any income at all. To determine reasonable rates, based on honest valuations of the roads, and honest returns and operating expenses, all of the earnings of the roads must be included.

INCREASE OF WEALTH IN THE UNITED STATES, PER CAPITA, COMPARED WITH RAILWAY EARNINGS.

In Mulhall's Wealth of Nations, pages 308, 309, supplemented by Gunton's Magazine for May, 1903, based upon Treasury bureau statistics in 1902, tables are given showing the wealth per capita of the people of the United States from 1850 down to 1900.

This includes wealth of all kinds, including products of farms, mines, factories, and increase in value of real estate. From the tables the following facts appear:

The wealth per inhabitant was in—

1850	$311
1870	631
1890	1,038
1900	1,235

The average annual increase per inhabitant for the last fifty years has been about $19 per year, and for the last one or two decades the increase has been about 2 per cent annually per inhabitant.

RAILWAY EARNINGS.

Statistical reports of the Interstate Commerce Commission show the following figures as to railway earnings:

In 1895, on 180,657 miles of road, the gross earnings were, in round numbers, $1,075,000,000; operating expenses were $725,000,000; the gross income per mile was about $6,000, and the net income per mile was $2,000.

In 1904 there were about 209,000 miles of road, whose gross income was $2,000,000,000; operating expenses one and one-quarter billion dollars, and net income nearly $800,000,000; gross income per mile about $9,400, and net income per mile about $3,500.

These figures show that in nine years there has been an increase of net income per mile of road of nearly 80 per cent and that the cost of

operation in the same period has been reduced, so that the net earnings were, in 1895, 33 per cent of the gross, and in 1904 they were 35 per cent of the gross. To these returns made by the railways add the earnings of the subsidiary lines, making a total of about $2,200,000,000 gross and $900,000,000 net per year, as estimated.

VALUE OF THE RAILWAYS.

The average market value of the stocks and bonds of the interstate-commerce railways for the past three years has amounted in gross to about the sum of $9,000,000,000, representing less than one-tenth of the value of all the property of the United States, which exceeds $100,000,000,000.

These market values, however, have been fixed by the earnings, and they in turn by what the traffic would bear, so that the market values of securities do not show the true value of the properties.

The Interstate Commerce Commission, in its report of February 11, 1905, at page 606, found that the total value of the roads in the Pacific system of the Southern Pacific Company, based on 5,543 miles, was $153,303,867, which is considerably less than $30,000 a mile.

The average value of all railways in the United States is not as high per mile as that of the Pacific system of the Southern Pacific Company, and we may therefore assume that the true value of all roads will not exceed $30,000 per mile. This shows that the value of all railways in the United States is less than six and one-third billion dollars, which is less than one-fifteenth in value of all of the property in the United States.

These figures show:

(1) That the railways, representing less than one-fifteenth in value of all the property of the United States, are annually absorbing over one-half of the average increase of wealth of 80,000,000 people, or about $11 annually per inhabitant.

(2) That the net earnings for nine years have increased 81 per cent per mile of road, or nearly 9 per cent per year.

(3) That the average increase of wealth of the people of the United States per capita is less than 2 per cent yearly, while the net earnings of the railways average 12 per cent on the value of the roads, as shown by their own unfair reports.

(4) At this rate of increase the railways will in eight or ten years absorb the entire increase of wealth per capita of the people of the United States.

THERE IS NO COMPETITION BETWEEN THE RAILWAYS—RATES ARE FIXED BY COMBINATION.

When the present commerce act was passed, in 1887, it was fondly believed by some that it was unnecessary to fix maximum rates or to give to any tribunal the power to fix them, but that competition between carriers would work that result, if combinations and pools were prohibited.

That hope has been utterly destroyed, as shown by the results.

No one would probably contend that there is any real competition between the railway carriers to-day.

The rates on transcontinental business are fixed by what is called a "joint tariff," filed with the Commission, in which are joined over 170 competing railways in the United States, and the rates fixed in that tariff cover all competitive and noncompetitive points upon those lines, embracing practically all of the railways between the Atlantic and Pacific seaports.

There are differences of opinion as to whether these rates fixed by competing lines in combination are violative of the Sherman Monopoly Act, but my own opinion is that they are according to the view of the Supreme Court of the United States in the majority opinions in United States *v.* Trans-Missouri Freight Association (166 U. S., 290, 343); United States *v.* Joint Traffic Association (171 U. S., 505, 578); Addyston Pipe and Steel Company *v.* United States (175 U. S., 211, 248), and Northern Securities Company *v.* United States (193 U. S., 191, 317).

The transcontinental rates are fixed and determined by what is termed by the railways the "transcontinental freight bureau," and this bureau fixed the rate on oranges, as other freight. (See Interstate Commerce Commission *v.* Southern Pacific Company, 132 U. S., 829.) In the case last cited it was found by the court that the initial lines had established a practice or rule of dividing the freight over connecting lines and that such rule and practice was in its operation a pool of freight prohibited by section 5 of the commerce act, and its operation was enjoined by the court.

Strenuous efforts were made by counsel for the railways to supersede this injunction pending appeal to the Supreme Court, but the court refused to suspend it on account of the provision of section 16 of the commerce act, which the court held indicated an intention on the part of Congress to carry into effect the decree of the circuit court pending appeal.

If the provisions of section 14 of the Esch-Townsend bill, providing for temporary restraining orders by any judge of the court, had been in force when the orange cases were decided by the circuit court, the decree would doubtless have been suspended pending an appeal, and although that controversy had been before the Commission and court for four years, it would still have been tied up and the decision of the circuit court have been without effect for another year or two.

Article I, section 8, clause 3, granting to Congress the power to regulate commerce with foreign nations and among the several States and with the Indian tribes, considered in connection with section 9, clause 6, of the same article, prohibiting preferences between ports of the several States.

Ingenious arguments have lately been made that in case a public tribunal created by Congress is given the power to fix railway rates, that by reason of the provision of the Constitution prohibiting preferences between ports of the several States any rate so fixed will have to be based upon a uniform mileage charge, and that the important elements of competition by rail and by water, now the controlling factors in determining rates, must be ignored by any such public tribunal.

It is curious that in all the period of time that railway rates have been determined by competition this idea never before occurred to

anyone and is only brought forward now when it is proposed to transfer the rate-making power from corporations exercising Government franchises, which fix the rates solely for their benefit, to another public corporation which will fix reasonable rates, having regard both for the public as well as for the carriers.

A brief examination of the power of Congress under the commerce clause and the prohibition of preferences between ports will show the fallaciousness of the argument.

First. As to the prohibition against preferences between ports of the several States:

In the leading case of Pennsylvania *v.* Wheeling Bridge Co. (18 How., 421), decided half a century ago, the court had under consideration the power of Congress to authorize the construction of bridges across navigable rivers to facilitate railroad transportation, and which created a burden upon water transportation between river ports, and in that case the court decided (1) that Congress had power to authorize construction of such bridges and to subject water transportation to their established height and position; (2) concerning what is forbidden by this clause, the court said that "what is forbidden is not discrimination between individual ports within the same or different States, but discrimination between States;" and (3) that "as to a preference by a regulation of commerce, the history of the provision, as well as its language, looks to a prohibition against granting privileges or immunities to vessels clearing or entering from the ports of one State over those of another."

Second. As to the commerce clause:

It has been settled for three-quarters of a century that the power of Congress to regulate interstate and international commerce is exclusive, and prohibits legislation by the States upon those subjects, and that commerce includes not only transportation, but also the buying and selling of commodities, and intercourse of every kind. (Gibbons *v.* Ogden, 9 Wh., 1; Bowman *v.* Chicago Railroad, 125 U. S., 465; Illinois Central Railroad *v.* Illinois, 163 U. S., 142; Addyston Pipe and Steel Company *v.* United States, 175 U. S., 211, 248; Hanley *v.* Kansas Railway, 189 U. S., 617.)

The power to regulate commerce is primarily a legislative function. (Peik *v.* Chicago Railway, 94 U. S., 164, 178; Ruggles *v.* Illinois, 108 U. S., 526, 534; Chicago Railway *v.* Wellman, 143 U. S., 339, 344; St. Louis *v.* Gill, 156 U. S., 649; Reagan *v.* Farmers' Trust Co., 154 U. S., 397; Smyth *v.* Ames, 169 U. S., 466.)

The power to carry on interstate commerce, whether expressly granted by Congress or impliedly inferred, emanates from and exists under the commerce clause of the United States Constitution, and can not be restricted, taxed, or burdened by the States.

The United States has the power to construct railways for the transportation of interstate commerce as a governmental function, or it may create public agencies in the form of corporations for that purpose, or confer such powers upon existing corporations, but whichever the form in which the power is conferred, its exercise is that of a United States franchise, and in the performance of a national power.

In Pacific Railroad cases, 127 U. S., 39, the Supreme Court said:

The power to construct, or to authorize individuals or corporations to construct, national highways and bridges from State to State is essential to the

mplete control and regulation of interstate commerce. Without authority Congress to establish and maintain such highways and bridges it would be ithout authority to regulate one of the most important adjuncts of commerce.

In the same case, the court said:

A franchise is a right, privilege, or power of public concern which ought not be exercised by private individuals at their mere will and pleasure, but should reserved for public control and administration, either by the Government rectly or by public agents. * * * No private person can establish a public ghway or a public ferry or railroad or charge tolls for the use of the same, ithout authority from the legislature, direct or derived. These are franises. (See also United States *v.* Union Pacific Railway, 160 U. S., 1; Illinois entral Railroad *v.* Illinois, 163 U. S., 142; United States *v.* Michigan, 190 U. S., 9, 396.)

We learn from these decisions of the Supreme Court, to which ere has been no dissent, that the power of a railway to establish d collect rates for interstate transportation is a franchise derived lely from the legislation of Congress, and based upon the commerce ause of the Constitution, and in so fixing and collecting such rates e corporation acts as a public agency.

In Louisville Railroad *v.* Behlmer (175 U. S., 648, 674) and Interate Commerce Commission *v.* Louisville Railroad (190 U. S., 273), d nearly fifty years after the decision in the Wheeling Bridge se, the court again had under consideration the matter of regulatg commerce by railroad and competition by water, as affecting the asonableness of the rates established.

In those cases the court held that the railway companies primarily nd the Interstate Commerce Commission and courts upon review ad the right and it was their duty to consider the matter of cometition both by rail and by water in determining reasonable rates, otwithstanding the provisions of the long and short haul clause of e commerce act.

The court in these cases not only decided that the Interstate Comerce Commission had the right to consider competition by rail and y water, but that its duty was to do so, and that if it determined e reasonableness of rates without considering such competition its ecision was illegal.

The argument of railway attorneys that the railways may fix rates aving regard to competition by water and by rail, but that the ommerce Commission has not that power and can not be given such ower, is met and entirely overturned by these decisions.

The fallacy of the argument is presented in two ways:

First. The United States, through Congress, can not do that ndirectly which it is prohibited from doing directly, and if it can ot confer upon the Commerce Commission the power to fix rates, nd consider competition by rail and by water in so doing, it can not ive that power through the commerce act to a railway corporation, nd if there were anything in the argument, it would follow that for fty years the railways have been acting illegally in basing terminal ates upon competition and are doing so now; and

Second. The courts, in a line of cases, have held that it is the duty f any agency which fixes rates to consider the matter of competition n determining their reasonableness.

CONGRESS HAS THE POWER TO REGULATE COMMEE
TIONAL MEANS.

In Interstate Commerce Commission *v.* Brir
470) the court, quoting with approval from the
loch *v.* Maryland (4 Wh., 316, 421), by Chief J

The sound construction of the Constitution must all
lature that discretion, with respect to the means by wh
are to be carried into execution, which will enable that
duties assigned to it in the manner most beneficial to
be legitimate, let it be within the scope of the Constitu
are appropriate, which are plainly adapted to that
hibited, but consistent with the letter and spirit
constitutional.

RAILWAY RATES ARE FIXED BY COMBINATION E
LINES AND NOT BY COMPETITI

The files of the Interstate Commerce Comn
bulk of the railway rates are fixed by so-calle
by the railways with the Commission.

The commerce act provides for filing "joint
ing lines, but makes no provision for filing of
lines.

In many of these so-called "joint tariffs" t
than 200 competing lines of railroad, and the r
between all competitive and noncompetitive p
ways.

It is idle to talk about securing reasonable
and by laws aimed against discrimination whe
there is no competition between the railways.

The combination between the railways has
leases and holding companies independently of
that it is asserted upon high authority that hal
control two-thirds of the mileage of the country

It is no doubt true that a handful of men pr
upon all of the railways of the United States
these railroads are now absorbing more than h
ings of the country, and in a few years, at th
crease, will absorb them all.

There is but one conclusion to draw from th
is that Congress must either resume the constitu
late commerce and take it away from the indiv
cise that governmental function, or the bulk o
country will not be divided among the people
concentrated in the hands of a few corporatio
portant power and chief function of the Gove
hands of a sort of bureaucracy, with the limit
burdens without the consent or representation

In conferring power upon the Commission
reasonable rates time is the most essential elem

The Esch-Townsend bill seems to proceed
whatever action is taken by the Commission in
sonable rates will be attacked by the railways, a
important that jurisdiction in such cases should
central court.

There doubtless is every reason for believing that this theory is well founded. Heretofore many decisions rendered by the Commission which were in favor of the public had been attacked in the courts by the carriers, and, unfortunately for the ambiguous and uncertain language of the commerce act, the Commission has been generally overruled and the public defeated.

The creation of a central court, such as proposed, will prevent much delay and confusion in the hearing of such cases, not only on account of the great multiplicity of courts where such cases might otherwise be taken, but conferring upon the court of transportation jurisdiction in commerce cases alone it ought to be able to dispose of the business speedily.

As shown by the above authorities, the matter of fixing rates is a legislative function, whether exercised by Congress directly or by a commission, and when the Commission has acted in the matter of fixing rates its decision should not be annulled or overturned unless found to be illegal or predicated upon some unconstitutional ground.

The attack upon the decisions of the Commission is collateral and indirect, and no greater mistake can be made than in authorizing the court of transportation, or any other court, to suspend the decision of the Commission pending review in the court.

In the Esch-Townsend bill the power of fixing rates is still primarily in the hands of the carriers, and the Commission is given the power to review them upon complaint being made.

In other words, a disinterested public tribunal is allowed to pass upon the reasonableness of the rates fixed by interested carriers, but by section 14 of that bill it is proposed to suspend the judgment of the Commission pending appeal or review.

If this is done it will nullify the efficacy of the act and will leave the machinery in nearly the same condition in which it is now.

A controversy between the public and the railways as to rates is a species of warfare, and if the law ties the hands of one of the combatants pending the fight, while giving the other full freedom, the result will not be protracted or difficult to ascertain.

The history of the cases litigated under the present commerce act shows that its efficacy has been destroyed chiefly by the great weapon of delay, as the following brief summary, giving the dates when the controversies commenced and when passed upon by the Supreme Court, will show:

Cincinnati and Texas Railway *v.* Interstate Commerce Commission (162 U. S., 184), commenced October 18, 1889; decided by the Supreme Court six years thereafter.

Texas Railway *v.* Interstate Commerce Commission (162 U. S., 195), arose March 23, 1889; decided by the Supreme Court seven years thereafter.

Interstate Commerce Commission *v.* Alabama Railway (168 U. S., 144) was five years in controversy.

Interstate Commerce Commission *v.* Chicago Railroad (186 U. S., 320), arose in 1894 and decided by the Supreme Court about eight years thereafter.

Missouri Pacific Railway *v.* United States (189 U. S., 274), commenced in 1893; decided in 1903, ten years thereafter.

In the latter case the Supreme Court seems to have been of the opinion that the decisions of the lower courts were correct, and yet

reversed the decrees of those courts apparently because of the great lapse of time since the cause was commenced, and said:

> In the nature of things it can not be ascertained from the record whether the railroad company now exacts the rates complained of as being discriminatory and which it was the purpose of the suit to correct.

In other words, where the railroad has violated the law and the decision of the Commission has been correct and the circuit court and court of appeals have properly decided the case, yet by reason of delay alone the Supreme Court will reverse after such a lapse of time.

Nothing could better illustrate the necessity of carrying into effect the orders of the Commission and compelling prompt action by the courts than this decision, and nothing could show the futility and absurdity of laws which apparently give the public remedies before the Commission and in the courts, but which in reality simply extend to it the privilege of endless litigation, while leaving the rate-making power in the hands of the carriers.

In my opinion, the provisions of section 14 of the Esch-Townsend bill should be amended by providing that the order and decision of the Commission should not be suspended or annulled except upon a hearing upon the merits, and section 1 of the bill should allow the Commission to fix a rate whenever it appears to the Commission that the existing rate is unreasonable, and to do this legislatively and not upon a protracted judicial hearing, and the Commission should control all charges for handling, storing, and icing freight.

CONCLUSION.

In conclusion, I desire to say to this committee that it is the unqualified opinion of the owners of the industry which I here represent, and of myself, that the bill known as the Esch-Townsend bill, with slight amendment, is the most intelligent, just, and comprehensive measure which has yet been presented for the regulation of commerce, having tender regard for the interests of the public and of the great railway interests.

Future events may show that it will be necessary to confer upon such a tribunal as the Interstate Commerce Commission the power in the first instance to establish railway rates, or to acquire the railway lines by purchase or condemnation, but until events shall prove the necessity for such measures it is submitted that no bill could be devised more suited to present conditions than the House bill.

(1) That bill is a practical resumption by Congress of the constitutional power to regulate commerce.

(2) The bill still leaves with the railways the power of fixing rates in the first instance, and only allows a readjustment by a disinterested public tribunal where the established rates are shown to be unreasonable or unjust.

(3) In conferring such supervisory power upon the Commission it in effect grants to the public the right of representation in the levying of tariffs which exceed more than fourfold the total taxes levied by the United States Government.

(4) In establishing a central court, with exclusive power to review cases heard before the Commission, it prevents confusion in otherwise bringing such cases before more than 100 judges of the United States circuit courts, and will establish a uniformity of de-

cision and precedent, and largely prevent the delays of trials and of appeals through intermediate courts to the Supreme Court.

(5) Finally, it brings all such important cases for review before a court composed of five judges instead of a single judge of the United States circuit court under the present practice, and thereby it is intended to secure correct decisions and prevent a choice of courts or of judges either on the part of the public or of the carriers.

Mr. CALL. I desire to call the attention of the committee to a matter which seems to me to be quite important in considering the relative tariff charges in the United States and in England. I have heard it stated, and I think before this committee, in a general way that the freight charges in the United States were lower than in any country in the world where rates were fixed or regulated by law; that they were much lower than they were in England.

Senator DOLLIVER. Except in very short distances.

Mr. CALL. Yes; very slight. One aspect of that matter I would like to bring before this committee. I find from the reports of the Commerce Commission that the average haul of freight in the United States is 240 miles, treating all railroads as one system, and that the average freight charge per ton per mile in the United States is 7 to 8 mills per ton per mile. It has been stated that the average freight haul in England is 25 miles and that the average freight charge in England per ton mile is a little over 2 cents, or three times as high as in the United States per ton mile; but the important fact is that the average charge in the United States on all lines of railways for 25 miles, or the average haul in England, is over 5 cents a ton mile, or more than twice as high as it is in England when you base it upon the average English haul.

Now, the reason of that is that the cost of transportation decreases with the length of the haul. I had occasion to compile, through the statistician of the Interstate Commerce Commission, certain tables of rates—distance tariffs. I have here quite a number of them. I have here the Georgia distance tariff of the fifth class, the Texas distance tariff, the Iowa distance tariff, the Illinois distance tariff, the Iowa distance tariff of the fifth class, and the Chicago, Milwaukee and St. Paul Railway distance tariff of the fifth class of freight. Those were selected as being typical distance tariffs in force in the United States. Now, as an illustration, in the Iowa tariff the charge per ton mile for 5 miles is 19 cents, for 10 miles it is 10 cents per ton mile, and for 500 miles it is 1 cent and 2 mills, and protracted at that rate for 2,500 miles would be 6½ mills. In other words, the decrease in the haul up to 500 miles is 94 per cent per ton mile; that it is only 94 per cent per ton mile less than it is on the 5-mile haul.

Senator DOLLIVER. The Iowa distance tariff does not pretend to run up to 500 miles.

Mr. CALL. They have that figured in here. They have put it in.

Senator DOLLIVER. I suppose it is for academic purposes.

Mr. CALL. Junction points might cover that, running it at angles. By the Chicago, Milwaukee and St. Paul Railway the rate per ton-mile on 5 miles is 20 cents; for 10 miles, 12 cents; for 50 miles, 5 cents and 2 mills; for 800 miles, 1 cent and 5 mills. There is an equally large reduction in that tariff for the long distance over the short distance, which I understand is largely caused by expense of

handling and loading and unloading; for when the freight is aboard the cars and the cost of handling is taken into account that practically the only additional cost is for power. It is upon that theory that the railways themselves file these tariffs, without any obligation of law. Now, when you consider, then, that the average haul in the United States is 240 miles, and that in England it is only 25 miles, you can readily see why upon one method of calculation you would figure lower rates in the United States than in England; but if you figure the rates which actually prevail all over the United States for the distance of the English haul, 25 miles, then our rates are two and one-half times as high. I want to get those facts before the committee, because the statement might have been misleading.

Senator FORAKER. Do you think they are facts?

Mr. CALL. I think those are facts, undoubtedly. I have taken those figures from tables that have been furnished me that I thought were reliable.

Senator FORAKER. Yes; but you have simply taken a suppositious case and figured by calculation a result. You do not make rates higher or lower by figures. What are the facts? Are rates higher in this country than in England?

Mr. CALL. Yes; for the haul which they have in England.

Senator FORAKER. That is, if they were reduced to 25 miles.

Mr. CALL. Yes.

Senator FORAKER. But they are not reduced to that.

Mr. CALL. On the contrary, perhaps if the English were hauling as far as we were their rates would be much lower than ours. I am comparing our rates against the English rates for a uniform distance, giving us the same distance that they have got.

Mr. Chairman, there was one other matter that I wanted to advert to here, and that is, I take it, that the law is fairly well settled relating to common carriers; that when a railway company undertakes or holds itself out as the carrier of persons or property that it is required by law to furnish all the necessary equipment that is necessary for the care and protection of persons and property which they hold themselves out to be common carriers for.

That when a railroad company engages equipment from another person or another corporation that they in no way absolve themselves from their duties as common carriers in doing so; that they can not discharge themselves from the duties which the law has placed upon them; that the concern which furnishes them this equipment, whatever it may be—whether a Pullman car or an express car or a fruit car—is nothing more or less than an agency of the railway. It is an agency of the railway company, and they stand in the same position to the railway company that a conductor does. It is in no respect different than if the railway company employed, we will say, a conductor company to take care of the collection of tickets and the conductor business. They could not in any way discharge themselves by calling themselves a company, that it is an agency of the railway, and I understand the Supreme Court of the United States has so decided in several cases relating to personal injuries and things of a like nature. Now, concerning car lines, these railway companies have made arrangements with car lines and they have attempted to hold out to the public that they as carriers are somewhat absolved and released from liability over fruit, for instance, in transit, by

reason of any act of the car lines, and they attempt to allow the car lines to fix the charges, as they call it, for icing. But I think the law is fairly well settled as a legal proposition that the car line is a simple agency of the railway, and that what the car line is doing is simply refrigerating freight which is engaged in interstate transit, and it does not in any way change the liability or the duties of the railway which is primarily responsible to the public for the transportation and for all the charges in connection with it from the beginning to the end. Now, I am aware that the liabilities have been somewhat separated as a matter of custom and practice, but I do not understand that it is in any degree necessary in framing any law to charge the car lines as being common carriers, that they are the simple instruments of the railway companies.

Senator DOLLIVER. What change of the law would you suggest to bring the icing charges, for instance, under the regulation of our interstate-commerce law?

Mr. CALL. That section 1, I think, should be somewhat strengthened; that is, section 1 of the Esch-Townsend bill should be somewhat amended by providing that where the Commission had found an existing rate for transportation or for storing or handling persons or property or commodities in transit, or otherwise protecting persons and property in transit, to be unreasonable that they should substitute a reasonable charge.

Senator DOLLIVER. Making the icing charge the act of the railway company?

Mr. CALL. Yes; that the charge or practice found to be unreasonable may be set aside, and that the Commission may substitute a reasonable one therefor, not only in the matter of transportation while engaged in interstate transit, but should include all charges in connection with the storing or handling or care of the property. I see that the Esch-Townsend Act does not so provide and it is ambiguous in that respect and leaves it open to all kinds of contentions as to what is meant. If Congress intended to mean that these unreasonable exactions of the car lines could be corrected by the Commission, why, in my humble judgment, they ought to express that in clear and unambiguous language, so that a running man can read. I think there is no need of using ambiguous phrases.

I wanted to advert to another question, and that is that under the Esch-Townsend bill the theory of that bill seems to be that the Commission is not to exercise a legislative power to prescribe a reasonable rate as a legislative function where they have found the existing rate to be unreasonable, but it seems to proceed upon the theory that the Commission is exercising judicial powers—that it is a sort of judicial tribunal. They must have a complaint filed before them; they must have answers made to that complaint; they must take testimony, as though it was a judicial hearing. I know from experience that the proceeding before the Interstate Commerce Commission on those proceedings, following the judicial practice, will not only consume months, but will consume years, before you get through with it. I collated all the cases that have gone through the Interstate Commerce Commission to the Supreme Court in order to ascertain how long it actually took to take a case from the Commission up to the Supreme Court, and I find that over seven years and a half was the average time.

Senator DOLLIVER. How much of that was
state Commerce Commission?
Mr. CALL. A varying time.
Senator DOLLIVER. The average.
Mr. CALL. About the same length of time
one of the courts, I think, taking three tribu
third of the time was before the Commission.
Senator DOLLIVER. Your own case was fou
the Interstate Commerce Commission?
Mr. CALL. The routing case was two year
the other part for four years.
Senator DOLLIVER. The case involving the
orange shipments?
Mr. CALL. That is four years.
Senator DOLLIVER. Were you busy all of th
Mr. CALL. I did not go into the case or hav
for two or three years. I learned that the
insufficient on some of the matters charged to
that they could act, and they wanted further
Senator FORAKER. How much testimony di
Mr. CALL. Altogether?
Senator FORAKER. Yes.
Mr. CALL. Oh, I should think they must h
and five thousand pages.
Senator FORAKER. It kept widening all the
Mr. CALL. Yes; every time you had heari
testimony.
Senator FORAKER. They would bring in so
Mr. CALL. No; no new road; but there w
interested and they wanted to be heard.
Senator DOLLIVER. That was a comparati
not?
Mr. CALL. No; it was a very complex ma
consider all these interests.
Senator DOLLIVER. It involved a single r
description of traffic?
Mr. CALL. There were half a dozen issues.
of the pools between these railroads, and the
ableness of the freight, with all the elements
sideration of reasonable rates, which the S
earnings, operating expenses, for a series of y
Senator FORAKER. As a matter of fact is
every case where you undertake to have a r
and widens and constantly widens until you
sand pages of testimony?
Mr. CALL. Yes; I think it can not be
system.
Senator FORAKER. That is what I understo
Mr. CALL. That is what I am criticising.
is the matter with the Esch-Townsend bill.
plan, has the plan which contemplates jud
tribunal, practically conferring upon the ra
the rates in the first instance. They fix the

whack at it. Then you propose to confer upon the Interstate Commerce Commission some supervisory power over that; but that power is a legislative power, and it is not judicial, and there is no necessity for this long-winded judicial proceeding before the Interstate Commerce Commission. If the Interstate Commerce Commission acts, and anybody feels aggrieved by that act, the courts are open to determine the regularity of that.

Senator FORAKER. Would it not be better to go into the courts in the first instance?

Mr. CALL. It would, if you could.

Senator FORAKER. What is the trouble about going? You can make up your case and present it in a preliminary way to Interstate Commerce Commission without going into all these questions that arise, and they can see enough very quickly, I should think, to determine whether or not they would be warranted in bringing the matter to the attention of the courts. Then they could turn it over to the United States district attorney for the proper district to let him proceed with it, and the court, under the law, as we made it in the Elkins law, is required to immediately postpone all its business and take up that case and end it.

Mr. CALL. It occurred to me that it is well settled that you can not confer upon a court of the United States—that is, a constitutional court of the United States—any administrative or legislative duty.

Senator FORAKER. Nobody under heaven ever contended that you could or supposed that you could.

Mr. CALL. How are you going to substitute any order fixing a rate?

Senator FORAKER. If there is a complaint that the rate is too high between two places—that there is a discrimination—it is a complaint that may be taken to the court and the court passes upon that question and enjoins the railroad at once, and that is the end of the thing complained of.

I do not see any difficulty. I never heard of anybody finding any difficulty in a bill of complaint alleging that a certain rate between two points was unreasonable and therefore unlawful, and asking the court to enjoin it.

Mr. CALL. That would be a perfect thing, in my opinion, if you could do it. But I contend that there is not any such power in the courts of the United States.

Senator FORAKER. Isn't there power in the courts to enjoin a wrong if you allege it?

Mr. CALL. Yes.

Senator FORAKER. And if it be irreparable in itself, one that you can not recover damages for?

Mr. CALL. Yes; but if you will have patience with me just a moment——

Senator FORAKER. I want to hold you right to that point. I do not want to get you off from anything.

Mr. CALL. I just want to answer that proposition, that when you place before the court a question as to the reasonableness of a rate which has been established that, of course, is a judicial question; but when you come to ask the court to enjoin the carrier from charging any more than that price thereafter, that involves the fixing of a rate

for the future. You are trying to accomplish by indirection what the Constitution says shall not be done directly.

Senator FORAKER. Now, nobody claims that, and so far as I am aware, thinks that is necessary. The question before the court would be just what the question is before the Interstate Commerce Commission, except only that the court can do something that would be effective. The court construes that law that the Interstate Commerce Commission can state whether that is a reasonable rate. If the court finds it is not reasonable, the court enjoins it. Of course, that is binding only so far as the facts of that case are concerned and as to the future, and the road must take its chances on changing that rate in any way.

Mr. CALL. Just supposing there was in the Federal court such a power to enjoin the transcontinental railroads from charging over $1.25 a hundred. I charge that anything above that was unreasonable. Now, the court upon hearing the testimony we will suppose finds that the allegations of the complaint are true and grants the relief sought. What would be the injunction?

Senator FORAKER. Simply enjoin them from further charging that unreasonable rate.

Mr. CALL. At $1.25 a hundred?

Senator FORAKER. Yes.

Mr. CALL. How would that aid me, when they could obey that injunction order by reducing, we will say, the cost of transportation one-tenth of a cent?

Senator FORAKER. But that is not the case you put, and nobody would assume, I think, that the railroads would do so unreasonable a thing as that.

Mr. CALL. Then, I do not understand you.

Senator FORAKER. The case you put was this: Your bill complained that they were charging you an unreasonable rate—that anything above $1.25 was unreasonable—and you asked that the railroad be enjoined from charging anything above that which was unreasonable, the maximum of which was $1.25. Then the issue is joined as to whether $1.25 is a reasonable rate.

Mr. CALL. Then, when you carry it into effect by injunction, the effect of it is that you are prescribing a rate for the future?

Senator FORAKER. No; the effect of it is on the facts stated in that case. They can not charge more than that, but if the railroad wants to charge more than that it must produce a new state of facts in a new case.

Mr. CALL. Did not the Supreme Court of the United States say in the case of the Interstate Commerce Commission against the Alabama Midland that when they undertook by indirection to fix a rate, or to prevent more than a certain charge being made for the future, that that was a fixing of the rate?

Senator FORAKER. Certainly; and nobody now contends that a court can do that, or that anybody else has the power to do it, but it seems to me there is no room for any difference of opinion that the court can do that. That stands, so far as that case is concerned, and no road could charge beyond that, or the road in the case involved could not do it until a new state of facts could arise. It does not fix the rate for the future, because to-morrow the road can raise the rate if there is any change in the conditions which would justify it.

Mr. CALL. You think it is a judicial question as to what a reasonable rate is under any existing circumstances and conditions?

Senator FORAKER. I think, when the interstate-commerce law says, as it does, that no road shall charge above a reasonable rate, you have a right to insist that they are charging you more than a reasonable rate, and the court has a right to find that that is true.

Mr. CALL. Your opinion is of course entitled to much more weight than is mine, but that has not been my view. The courts can only attack a rate or review it when shown to be confiscatory. There is a wide latitude given to the legislative rate-making power between high and low rates which the courts can not disturb as being confiscatory. Therefore to leave the rate-making power with the railways and by a new act give the courts power to review as to reasonableness would leave the subject exactly as it is now as to rates for the present, and the courts could not fix a rate for the future.

Senator FORAKER. I only wanted to get the benefit of your views.

Mr. CALL. My opinion is that the courts can not do it.

Senator FORAKER. The courts are every day passing on that identical question, as often as a person alleges that, as to whether a rate is reasonable, and it enjoins the collection of that rate if it finds it is not. That is not a rate for the future, except only as the railroad may see fit to abide by it; but it is absolutely conclusive for all time to come on that state of facts, is it not? Is it not true when the court makes that kind of an order, and is not that absolutely conclusive for all time to come as to that state of facts?

Mr. CALL. Yes; but who is going to determine just when the circumstances and conditions change?

Senator FORAKER. The road would have to affirmatively show that they have changed before they could raise the rates.

Mr. CALL. To hold it at that rate and to compel them to apply to the court for a modification of the order would be for the court to take supervision of the whole business.

Senator FORAKER. That we would not do and that is not necessary.

Mr. CALL. I endeavored to get the Commission to make an order in this orange case, assuming that they had quasi-judicial powers, when they had found that a reasonable rate was $1.10 and not $1.25. I asked them to make an order forbidding the railways from charging more than $1.10 so long as the present conditions and circumstances continue, but they would not do it because they held they had no authority.

Senator FORAKER. Yes.

Mr. CALL. I was going to test it upon the theory that that was a judicial order which could be made and carried out and I thought it worth testing, but upon full consideration the Commission thought they had no such power.

Senator FORAKER. Undoubtedly the Commission has no such power.

Senator CARMACK. The law does not give the Commission that power.

Senator FORAKER. The Commission has no power except that which the statute confers upon it.

Mr. CALL. The only power they do have is judicial and administrative.

Senator DOLLIVER. In your orange case suppose the Commission found that the rate was unreasonable, and that the parties to that

suit, the complainants, had been aggrieved by reason of that violation of the interstate-commerce law and had calculated the amount of damages they had suffered, would not they have been compelled to have started on a base line of what, in their judgment, in that case would have been a compliance with the interstate-commerce law?

Mr. CALL. Taking such findings as a basis for a suit for recovery, you mean?

Senator DOLLIVER. The same proceeding. This section 15 provides they may not only condemn the rate, but that they may assess any injury or damage that has been sustained by the party or parties complaining or by other parties agreed in consequence of that violation of the law.

Mr. CALL. If it had been paid in the past.

Senator DOLLIVER. Yes; and could not they have included in their decree a finding of damages or injuries that had been suffered by the parties on account of the exactions of that unreasonable rate?

Mr. CALL. I can not answer that question.

Senator DOLLIVER. And pass that question along to the court?

Mr. CALL. I do not know just what the effect would be, but I should think it would be a help. I should think the findings would be prima facie evidence for the recovery of overcharges, if you could recover them.

Senator DOLLIVER. Suppose they had in their order not only required the carriers to desist from the rate found unreasonable, but to reimburse the complainants in an amount which would measure the extent of the unreasonable overcharge; that would have been a legal order would it not—an order, I mean, enforceable in the courts?

Mr. CALL. I would not think so.

Senator DOLLIVER. This section 15 reads as follows:

SEC. 15. That if in any case in which an investigation shall be made by said Commission it shall be made to appear to the satisfaction of the Commission, either by the testimony of witnesses or other evidence, that anything has been done or omitted to be done in violation of the provisions of this act, or of any law cognizable by said Commission, by any common carrier, or that any injury or damage has been sustained by the party or parties complaining, or by other parties aggrieved in consequence of any such violation, it shall be the duty of the Commission to forthwith cause a copy of its report in respect thereto to be delivered to such common carrier, together with a notice to said common carrier to cease and desist from such violation, or to make reparation for the injury so found to have been done, or both, within a reasonable time, to be specified by the Commission; and if, within the time specified, it shall be made to appear to the Commission that such common carrier has ceased from such violation of law, and has made reparation for the injury found to have been done, in compliance with the report and notice of the Commission, or to the satisfaction of the party complaining, a statement to that effect shall be entered of record by the Commission, and the said common carrier shall thereupon be relieved from further liability or penalty for such particular violation of law.

Suppose they take that order or decree up to the court to have it enforced, how could the court enforce it without finding what would be a reasonable maximum rate in that case?

Mr. CALL. There is no provision in there for enforcing that order—for collecting the overcharge. The Commission can not change any tariff regularly fixed and filed by the railway. It can only consider charges made in excess of the tariff, which it can order refunded.

Senator DOLLIVER. The courts would order them to pay. If they can take that order they make and ask the court to force the com-

pliance of the road with it, they certainly would be able to discover a method of collecting it.

Mr. CALL. Perhaps you are more familiar with that than I am. I have never known of an overcharge within the tariff being refunded through an order of the Commission.

Senator DOLLIVER. You have discovered yourself a great many powers in this interstate-commerce law?

Mr. CALL. Yes.

Senator DOLLIVER. You are the author of the idea of beginning this proceeding by injunction. I believe you are the first lawyer in the United States who undertook those injunction proceedings in these cases?

Mr. CALL. No; I do not claim that.

Senator FORAKER. You are, so far as we are advised, the first lawyer who has told us of it.

Mr. CALL. I think I secured the first injunction that the United States ever obtained to open a railroad company over a combination of strikers in the Debs suit. I brought proceedings for the Government to open the Santa Fe and Southern Pacific railroads, but I do not claim that I brought the first commerce suit.

Senator DOLLIVER. If it could be true that such an order could be made it would literally require the court to find the maximum rate that would be just and reasonable in that case.

Mr. CALL. Yes; covering past rates.

Senator DOLLIVER. Yes. Do you have any doubt that a solemn decree of the circuit court of the United States would be instantly observed by these railroads?

Mr. CALL. I think if that law was specific in that respect you could execute it in that way for past rates.

Senator DOLLIVER. Supposing it to be feasible and constitutional, how would that affect the question of the expedition of these cases as compared with the present method of procedure?

Mr. CALL. It would cover past transactions. It would not fix any rate for the future. It would not determine what the rate should be for any period of time in the future.

Senator FORAKER. Would not the Commission determine what was the maximum rate upon that state of facts?

Mr. CALL. At that time?

Senator FORAKER. Certainly.

Mr. CALL. Yes; it would.

Senator FORAKER. Now, then, could the road go beyond that until it could show a new state of facts? Do you imagine it would try to do it?

Mr. CALL. No, sir. I think, Senator, that if the law provided that after it had been found that a certain rate was excessive and that a certain other rate was the maximum rate which should be charged, that rate could not be advanced without the approval of the Commerce Commission and a showing of changed conditions and circumstances; you could enforce that beyond a question.

Senator FORAKER. Do you think it is necessary to provide any such thing as that? If the court simply finds, upon a state of facts presented in a case that is litigated, a real litigation, where all the testimony is brought out, that a maximum rate is so and so, do you im-

agine that the road would undertake to charge more than that and lay itself open to another suit until it could show a different state of facts?

Mr. CALL. Yes; I do. I think they would.

Senator FORAKER. You think they would?

Mr. CALL. I think they would.

Senator FORAKER. That is what I want to get your view about. If the court, for instance, now, had had your case before it, and had found that $1.25 was unreasonable, and $1.10 was the maximum reasonable rate upon the facts presented to it, and had issued an injunction enjoining the road from collecting from you more than $1.10 upon a state of facts produced in that case, do you imagine that, your case being ended, the next day or the next week or the next month, without a new state of facts arising, the railroad would again commence charging more than $1.10, and lay itself open to another litigation?

Mr. CALL. I think, Senator, that the court would not go quite so far as you are suggesting.

Senator FORAKER. No; but would not the court have to go that far, if that was the issue made—what is the reasonable rate? The law says only a reasonable rate shall be charged.

Mr. CALL. But the court would determine that the charges which have been made under those circumstances and conditions are excessive.

Senator FORAKER. But the court would not have to stop with that. You have a right to allege that the road has no right to charge you, under the law, more than a reasonable rate, and that a reasonable rate is only $1.10, and that you want the road enjoined from charging anything more than $1.10, which is the rate fixed by law.

Mr. CALL. Yes.

Senator FORAKER. The court would have a right to try that very identical question, would it not?

Mr. CALL. I do not think it would, in that form. I believe the court will wholly——

Senator FORAKER. Then you think the court could not in such a case find anything except whether $1.25 was an unreasonable rate or not?

Mr. CALL. Whether that was a reasonable rate? They would say that the other method was an attempt to thrust upon the court a legislative function by indirection.

Senator FORAKER. No; why would they? It is simply a question that you have a right to make, have you not? The question is not, under the statute, whether they have a right to charge $1.25; but the naked legal question made by the statute is whether they have a right to charge you more than a reasonable rate. The question is, What is a reasonable rate?

Mr. CALL. Yes; that is, relating to the present time.

Senator FORAKER. What is a reasonable rate; and you have a right to say that not exceeding $1.10 is a reasonable rate in the case you put, and that is the question the court will try. If the court finds that $1.10, your contention, is a reasonable rate, it will say so and end the matter. That is purely a judicial function.

Mr. CALL. Well, Senator, you present that view very strongly; but I do not agree with you. I think the rate-making power alone could determine when conditions had changed and when to change the rate.

Senator FORAKER. I wish you would think a little about that.

Mr. CALL. I will be glad to do so.

Senator CLAPP. Following up the line of inquiry made by Senator Foraker, if the rate from A to B was $1, and the rate from A to C was $1.20, and it was claimed that there was no reason why the rate from A to C should be more than the rate from A to B—in other words, that the added rate to C was a discrimination against C——

Mr. CALL. That is, the higher charge?

Senator CLAPP. No; it has no reference whatever to a higher charge.

Mr. CALL. No.

Senator CLAPP. It is a discrimination between two different points.

Mr. CALL. I am trying to follow you.

Senator CLAPP. Yes. Now, if that complaint was made, that the rate given to C was a discrimination against C, being higher than it was to B, and the court took jurisdiction of that, the enjoining of that discrimination would necessarily result in putting the rate from A to C down to $1, would it not?

Mr. CALL. I should think so.

Senator CLAPP. Yes.

Mr. CALL. Of course, assuming that the proceedings were regular.

Senator CLAPP. Assuming that the court did it?

Mr. CALL. Yes.

Senator CLAPP. They would take the responsibility. In the case of Missouri Pacific Railway *v.* The United States (189 U. S.), the complaint was that the rate from St. Louis to Wichita was higher than the rate from St. Louis to Omaha, and that it ought not to be higher, and that that was a discrimination; and the ultimate prayer of the complaint or bill was for relief in the grant of a perpetual injunction restraining the respondent from continuing to exact a greater rate for transportation of freight of like classification between the city of Wichita and the city of St. Louis than was asked between the city of St. Louis and the city of Omaha.

Mr. CALL. Yes.

Senator CLAPP. Now, sustaining that request and granting a perpetual injunction would, subject to subsequent changes that might be made upon changed conditions, at least for the time being, fix the rate between St. Louis and Wichita, would it not?

Mr. CALL. I should think so; yes.

Senator CLAPP. Yes.

Mr. CALL. I should think that would be the effect of it, although the question, as I understand, was not as to the reasonableness of the rate per se, but that case proceeded upon the theory that there was a discrimination.

Senator CLAPP. Exactly.

Mr. CALL. Yes.

Senator CLAPP. But it resulted in fixing a rate?

Mr. CALL. Yes; that really would have been the effect of it if the court had done it.

Senator CLAPP. The court did sustain the proceeding, and remanded it to the circuit court for further proceedings.

Mr. CALL. Yes; they reversed both decrees of both courts.

Senator CLAPP. And two of the judges even went so far as to insist that that could have been done independent of the Elkins Act.

Mr. CALL. Yes; and I have some doubt as to what the court will do with that case when they get it up again. They reversed it——

Senator FORAKER. They sent it back to be proceeded with by the Interstate Commerce Commission, but they have never proceeded.

Mr. CALL. Yes; I know that. I think it is an open question what they finally will do with that case.

Senator CLAPP. Do you think it is an open question as to whether or not the Federal court, especially under the view taken by the Supreme Court, would refuse a permanent injunction because the granting of that injunction would, as an effect, leave a given rate between two points? Do you think they will ever question that again in the Supreme Court of the United States?

Mr. CALL. Senator, if I were on the Supreme Bench I would not question it.

Senator CLAPP. No; but I am speaking of the Supreme Court as it is constituted and likely to be constituted.

Mr. CALL. My observation is that the Supreme Court of the United States has given this interstate-commerce act a very strict construction, and has lopped off, by one decision after another, powers that other people thought were granted to the Commerce Commission, and I anticipate that in the future the court will construe all such things very strictly against the power—against the attempt to confer the power.

Senator CLAPP. You are here before us as a lawyer?

Mr. CALL. Yes, sir.

Senator CLAPP. And we are seeking to get the opinion of men like you on these questions.

Senator CULLOM. He has given it.

Senator CLAPP. No; he has not given it. I ask you whether you think, in view of that decision and the other decisions of the court, and the general scope of equity, that the Supreme Court will ever hold, now, that they would refuse an injunction because the granting of an injunction would as an incident leave a given rate in force?

Mr. CALL. That is a fair question, and I will give you a frank and candid answer. My opinion is that the court will refuse, when they ultimately consider that question, to decide it on its merits; that they will not by a decision fix a rate, whether they call it a discriminatory rate or otherwise.

Senator CLAPP. You said you would give me a fair answer. I am not asking you as to the merits of that case. I do not know, except for the statement in that book, that the distances are equal between those points.

Mr. CALL. Yes.

Senator CLAPP. I am not discussing the merits of that case. I am discussing a simple abstract proposition of equity law.

Mr. CALL. Yes; so am I.

Senator CLAPP. Then do not say anything about the merits of this case. Do you think that the court will refuse, in any case—we will not speak of this case—to grant injunctional relief where the facts warrant it upon the sole ground that in granting an injunction one of the effects would be to leave a certain condition in force?

Mr. CALL. I think I have answered that; I will answer it again. I think that when that question comes before the Supreme Court they will decide—that is, that they probably will hold—that they

can not fix a rate by indirection under the circumstances which you have just delineated.

Senator CLAPP. Then you think that they will refuse an injunction upon that sole ground?

Mr. CALL. Yes, sir; upon that ground.

Senator CLAPP. On the ground that granting an injunction——

Mr. CALL. Upon that sole ground; that is my own belief about it.

Senator CLAPP. What proportion of injunctions issued by the courts throughout this country to-day are there that do not leave as an effect a given condition?

Mr. CALL. Well, Senator, I think that those decisions of the Supreme Court——

Senator CLAPP. I am not speaking of rate injunctions; I am speaking of injunctions generally.

Mr. CALL. Yes; I know. They usually proceed upon the establishment of rights of persons; and all injunctions, generally speaking, control the action and the rights of the parties for the future. I myself have never been able to distinguish, on principle, between the effect of an injunction and the effect of a law as to governing a rule of action. I think they stand on an equal footing; and I never concurred or coincided with the view of the Supreme Court of the United States that that was a legislative question, but I think they will hold that just the same.

The CHAIRMAN. You may be excused, Judge Call, with the thanks of the committee.

Senator CULLOM. After concluding your oral statement yesterday you asked permission to file a written statement and have it included in the record. In that written statement you charged the Armour Car Lines or the Armour interests with being interested in buying, packing, and selling fruit in California as they were in Michigan, Florida, and other fruit centers. Was that statement based on you own personal knowledge? Are you willing to vouch for its truthfulness? Are you aware that Mr. Armour testified before the Interstate Commerce Commission under oath that the Armour interests were not engaged in the buying, selling, or packing fruits or interested in companies in California the names of which were put to him, who were engaged in the fruit business, and are you aware that other officials of Armour and Company have testified under oath in other proceedings that neither Armour and Company nor any of its allied interests or its officials were engaged in the fruit business, and are you also aware that Mr. Robbins, president of the Armour Car Lines, in his statement before the Committee on Interstate and Foreign Commerce in the House of Representatives, denied in detail that the car lines, neither directly or indirectly, were interested in the fruit business, and are you aware that he made the same statement before this committee only a few days ago, and are you also aware that the Interstate Commerce Commission, after hearing testimony on this point, in the Michigan fruit case, found, and it is a matter of record, that the Armours were not engaged in the fruit business in Michigan? In view of this are you willing that your written statement, charging the Armour interests with being engaged in the buying, packing, and selling of fruits in Michigan, Florida, and other fruit centers, should stand, or do you wish to withdraw the same?

Mr. CALL. Senator Cullom, of this committee, has requested me to state whether the statement made by me at a former hearing to the effect that the Armour interests were engaged in the fruit business in southern California as they were in other fruit centers, was based upon my own knowledge, and whether I had examined or heard testimony before the House committee and before the Interstate Commerce Commission and before this committee to the effect that none of the Armour corporations or any of the individual stockholders therein were interested in any way in any fruit business in the United States.

In answer to those inquiries I would say that the statement referred to was not based upon my own personal knowledge, as I had not had access to the stock books and records of the various Armour companies, and without having had a personal inspection of such books and records I could not say of my own knowledge that the Armour Car Lines or Armour and Company or the Armour interests did in fact own fruit-packing interests in southern California.

I was much interested in the statement which Mr. Robbins made before this committee during the present week that the Armour interests were not interested in any fruit business. I was also deeply impressed with the absolute refusal of Mr. Robbins, president of the Armour Car Lines and a director in Armour and Company, to produce the books and records of the Armour Car Lines and submit them to the inspection of this committee, and also his refusal to state what the earnings of the Armour Car Lines were, or what the mileage of refrigerator cars was during a given period.

With these facts concealed from this committee and withheld from public information, it is more difficult to determine upon exact information what amount of earnings have been made by the Armour Car Lines from mileage and from refrigeration charges as distinguished from earnings of the fruit business or otherwise.

I have not heard or read the testimony of Mr. Robbins before the House committee or before the Interstate Commerce Commission, or other testimony concerning these questions before public investigating tribunals, except some before this committee before mentioned; nor have I seen or heard the testimony of Mr. Ferguson; nor am I familiar with any finding made by the Interstate Commerce Commission concerning interests of the Armour Car Lines in the fruit business of Michigan. I think the only testimony upon these questions which I have heard was that of Mr. Robbins, above mentioned, and I was attracted by his refusal to produce the books or disclose the facts concerning the earnings and mileage of his car-line system.

The Armour Car Lines are carriers of interstate commerce, acting under a contract with the Southern Pacific Company, and doubtless for that reason have felt interested in the railway-rate bill under consideration.

Those interests were doubtless given a hearing by this committee because of the fact that they were common carriers of interstate commerce and would be affected by the passage of the railway-rate bill; and it seems to me that the interests of the public, as well as information which this committee is seeking to obtain, requires that the Armour Car Lines should make full disclosure as to the matters which they are attempting to conceal.

I desire to supplement my former statement with this statement, and as so supplemented I desire to have it all stand together so that my statement concerning the Armour Car Lines may be explained as herein set forth.

STATEMENT OF MR. F. B. BOWES.

Mr. BOWES. My name is F. B. Bowes; I am assistant traffic manager of the Illinois Central road, with headquarters at Chicago.

The CHAIRMAN. How long have you been in that service as assistant traffic manager?

Mr. BOWES. As assistant traffic manager since January 1, 1903.

The CHAIRMAN. How long have you been in the railroad business?

Mr. BOWES. Twenty-nine years.

The CHAIRMAN. Twenty-nine years?

Mr. BOWES. Yes, sir.

The CHAIRMAN. With various companies, I take it?

Mr. BOWES. No, sir; exclusively with the Illinois Central road.

The CHAIRMAN. Now, you may make your statement on the pending question, as briefly as you can.

Mr. BOWES. Thank you, sir.

Mr. Chairman and gentlemen, I have prepared no written statement of any phase of the Esch-Townsend bill affecting the railroad question, and my remarks will be confined strictly to the rate features or phases of the bill.

I have read the testimony of some of the witnesses who have touched upon those features, notably Mr. Hines and Mr. Bird. They have gone so fully into the general questions that there is nothing for me to say that would not be repetitious. But it has occurred to me that possibly concrete illustrations of the difficulties that surround the making of freight rates would be of some use of your honorable committee. I have in mind a case that has been up in the past few months, and I will endeavor to give you, briefly, the points concerning it.

Some months ago the Chicago Shippers' Association, composed of the leading merchants of Chicago, petitioned the southern roads for a revision in what are known as the merchandise rates, covering the classes from 1 to 6, inclusive, destined to southeastern territory. They were joined in their petition by the St. Louis merchants, under the auspices of the St. Louis Traffic Bureau. The petition asked for——

Senator FORAKER. If I do not interrupt you, did Cincinnati join in that?

Mr. BOWES. It did not, Mr. Senator.

Senator FORAKER. Just Chicago and St. Louis?

Mr. BOWES. Just Chicago and St. Louis. The petition alleged that the rates as in effect to-day on the numbered classes were unfair to Chicago and St. Louis as against and in favor of the rates from New York and eastern cities to the southeastern territory, and in order to get action they requested that the rates from Chicago to Atlanta as a basing point be made the same as the all-rail rates from New York. They asked that the rates from Chicago to Montgomery, Ala.—another basing point, and a representative one in the southeastern territory—be made the same as the sea and rail rates from

New York or the water and rail rates, as I will call them, although we refer to them in that section as the sea rates.

Senator FORAKER. How do they get to Montgomery; do they go clear around to the Gulf and go up?

Mr. BOWES. They can get to Montgomery in various ways. They can get to Montgomery through Mobile, or they can get to it through the south Atlantic ports.

A committee of the Chicago merchants and a committee of the St. Louis merchants appeared before a joint convention of the Mississippi Valley and the Southeastern Freight associations, having jurisdiction over this particular territory, and made arguments in favor of their petition, and a great many railroad men thought they were very sound. But there developed this situation:

About twenty-five years ago a relative adjustment of rates from the East and from the West was established. That adjustment contemplated the same rate from Louisville to Atlanta, for illustration, as the water and rail route from Baltimore.

Senator FORAKER. To Atlanta?

Mr. BOWES. To Atlanta. I just take that particular case to illustrate the complexities of the situation. The rates to Atlanta are fixed by water to Savannah, and the Georgia commissioners scale of rates from Savannah to Atlanta. They fix the lowest rates that are in effect, and they have fixed them for many years. But the petition of Chicago did not ask that they be given the water and rail rates, but simply the all-rail rates, which are on a differential basis higher than these water and rail rates.

The rates from New York are fixed on a basis of certain differentials over the Baltimore rates; the rates from Boston and the rates from Philadelphia in like manner. By that method we arrive at what are the through rates in effect from the eastern cities to Atlanta. The rates from Chicago and from St. Louis are made by adding to the rate from the Ohio River to, say, Louisville, for instance, the local rates in effect by the various lines.

The result of that combination on the Ohio River in the case of the western cities and on Baltimore in the case of the eastern cities was to produce a difference of 21 cents in the first-class rate in favor of New York as against Chicago; and that was the basis of the complaint of the Chicago people. They did not care particularly whether that parity was brought about by an advance of the New York rates or reduction of the Chicago rates; either course would be satisfactory to them. We had many meetings to consider the various phases. There was a meeting in St. Augustine in January, in New York in February, in Chicago in March, in New York in April, and two further meetings in Chicago this month.

That adjustment, as I have said, has been in effect for about twenty-five years, and commercial conditions had adjusted themselves to it, so that it presented a very serious question from every standpoint of a practical traffic man. The eastern lines stated that if the relative adjustment from the Ohio River and from Baltimore was changed by reduction, the rate from Baltimore would go down proportionately. The consequence of such a course would mean that the relative rates would be still maintained, but on a lower scale, and the relief would not be granted to Chicago.

The steamship lines running from New York and Philadelphia nd Baltimore, in giving their views on the petition, stated that as a natter of fact, instead of advancing the rate from the East or allowng any reduction from the West, the rates should be reduced from the East; that the West had a great territory in which to market her goods; that the East had been narrowed down to this little so-called southeastern territory," and it was unfair for them to make any hanges that would bring about a revision such as was asked for.

At these various conferences, which were attended by various raffic officers, general freight agents, traffic managers, executive fficers, and presidents of the roads, all the phases of the subject were gone over. The eastern rail lines finally said that provided this djustment from the Ohio River was not disturbed, and thereby the elative adjustment of Baltimore changed, they would be willing for he lines leading from Chicago and St. Louis to the Ohio River to nake any reductions in their proportions north of the Ohio River. Of course that would not leave very much for the lines hauling the usiness from Chicago to Louisville, if they equalized that 21 cents lifference. But realizing that it was the best that could be done, hey finally decided, or, rather, the lines leading from St. Louis ecided, to make a reduction in the prportional rate from St. Louis nd the Ohio River of 5 cents a hundred on first-class freight, and rom that down, taking effect on the 15th of this month. That, of ourse, brought the St. Louis rates very close to the New York basis. Ve then had to consider Chicago; and after the action taken at St. ouis, it was thought no more than right that the Chicago rates hould be revised, and we thereupon reduced the Chicago rates the ame amount in cents per hundred on those six classes.

Senator FORAKER. That is, 5?

Mr. BOWES. The six classes—1 to 6, inclusive—effective yesterday. Vhile that has not given Chicago the relief sought for, it has gone n a measure in that direction.

Senator FORAKER. Was that satisfactory to Baltimore and New Tork?

Mr. BOWES. It was. As I explained, Mr. Senator, the lines leadng from the East stated that if the adjustment from the Ohio River emained intact they would not have any objections to the lines north f there reducing their proportions to the Ohio River; and that is vhat they did, effective from St. Louis on the 15th and from Chicago esterday.

I cite that as one case to show the complexities and the difficulties nd the dangers attending a matter of this kind.

Senator FORAKER. I want to get a little information from you here, if the chairman will allow it. You reduced the rate from Chiago to the Ohio River?

Mr. BOWES. Yes, sir.

Senator FORAKER. Which is the basis?

Mr. BOWES. Yes, sir.

Senator FORAKER. Five cents a hundred?

Mr. BOWES. Five cents per hundred on first class, 4 cents on second lass, 3 cents on the third class, 2 cents on fourth, fifth, and sixth lasses. Effective yesterday.

Senator FORAKER. And the same for St. Louis?

Mr. BOWES. Yes, sir.

Senator FORAKER. The rate from there, from the Ohio River down, remains the same?

Mr. BOWES. Yes, sir.

Senator FORAKER. Then, in this change Cincinnati did not get any relief at all?

Mr. BOWES. We have nothing to do with the rates from Cincinnati.

Senator FORAKER. No; there does not seem to be anybody having anything to do with Cincinnati. That is the trouble. We are 5 cents a hundred worse off as against——

Mr. BOWES. As compared to Chicago.

Senator FORAKER. Chicago and St. Louis both?

Mr. BOWES. That is right.

Senator FORAKER. For that southeastern trade?

Mr. BOWES. That is correct.

Senator FORAKER. They did not come into this contest at all?

Mr. BOWES. No, sir; they did not become a party to it, or, for all I know, made no move in that direction.

Senator FORAKER. This was simply a revival of the old Maximum Rate Case?

Mr. BOWES. It was.

Senator FORAKER. Cincinnati was in that?

Mr. BOWES. Cincinnati was very much in that case.

Senator CULLOM. I understand that Chicago has not yet gotten its rights?

Mr. BOWES. Chicago, Mr. Senator, has not gotten what she asked for. I could go at length into the various phases of it; but I just wanted to give a skeleton idea of what we have to face when we are considering a rate adjustment.

Senator FORAKER. Have you been in Cincinnati since this was done?

Mr. BOWES. No; but I do not have to make any amends in Cincinnati, Mr. Senator. That is one thing that I can evade.

The CHAIRMAN. You do not live there?

Mr. BOWES. I do not live there, and we do not reach there except through a connection.

Senator FORAKER. Well, I have to go there pretty soon.

Mr. BOWES. I thought it would be a good case to bring before this committee to show just what we have to face.

Senator CULLOM. The difficulties involved?

Mr. BOWES. The difficulties involved, the complexities and the dangers attending the change of any rate. Now, if you gentlemen understood me, you could see that the change in a rate from the Ohio River would involve a change in every rate that bases on the Ohio River in the States of Illinois, Wisconsin, Indiana, Ohio, and Pennsylvania on the one hand, and it would involve a change in every rate from New England and from the Eastern States that base on Baltimore on the other.

Senator CULLOM. The point you make is that it would be a dangerous power to give into the hands of a commission? That is what you want to say?

Mr. BOWES. By all means, Mr. Senator; because, while you might be petitioned by Cincinnati, the Senator's home, for a change in a rate from Cincinnati to Atlanta—just one rate—if that was reduced it would mean a relative change of thousands of rates, and you could not confine it to Atlanta upon this relative adjustment.

Senator FORAKER. In other words, there is no such thing as revising a rate—a rate?

Mr. BOWES. Sir?

Senator FORAKER. I say, there is no such thing as revising a rate?

Mr. BOWES. One particular rate? Not one rate; no, sir; without tearing down the entire structure.

Senator FORAKER. You destroy the equilibrium?

Mr. BOWES. Exactly. This adjustment was made many years ago, twenty-five or more; and, as I say, commercial conditions have grown up and are, you might say, rooted to that adjustment. I claim, therefore, that traffic men, experts dealing with the situation there, having these various requests to face every day, and having the necessary knowledge of the relation, the interdependence of one rate to another, are the only persons competent to pass on the question of freight rates. To say nothing of the numerical feature of it, I just wish to mention that on our system there are nearly 100 people engaged in either revising or establishing rates and tariffs every day.

Senator CULLOM. The main part of the work is to find out how you can raise it a little, is it not?

Mr. BOWES. Well, Mr. Senator, we would like to have more in that direction, but we have not been able to do so. At the same time, we can demonstrate to you that we have made substantial reductions.

Senator FORAKER. As a matter of fact, has not the operator all the while to reduce rates?

Mr. BOWES. Constantly. We have never been confronted with a request on the part of any commercial community or shipper to advance freight rates.

Senator FORAKER. That pressure comes from localities and also from shippers?

Mr. BOWES. Yes, sir.

Now, before I leave this particular case, referring to the question of whether rates are advanced or reduced, suppose I speak of this Ohio adjustment with the West and the Baltimore rates for the East. They were substantially reduced, I think, either on January or February 1 of this year 9 cents a hundred on first class, and proportionately less on the other classes. As I say, that was a relative adjustment. Baltimore was reduced, rates from New York were reduced. Philadelphia was reduced 9 cents on first class to Atlanta, likewise from Cincinnati, Louisville, and every rate that bases on the Ohio River.

Senator CULLOM. You come in there?

Senator FORAKER. Yes——

Mr. BOWES. That is a relative adjustment.

Senator FORAKER. But you get in 5 cents ahead of us; that is the way Chicago is always doing. We ought to have a bigger city than Chicago and we would have if we had had the lake and a few other things.

Mr. BOWES. I think Cincinnati is pretty well favored. The Ohio River is a very controlling factor.

The CHAIRMAN. Then your contention is that giving this power to revise a rate at all necessarily means the power to revise a great many rates, and a commission sitting in Washington would not be able to revise all these rates?

Mr. BOWES. Precisely.

The CHAIRMAN. I wanted to get at your idea.

Mr. BOWES. That is my idea precisely—that one case involves thousands of rates.

Senator FORAKER. West Virginia is affected by all that, too.

Mr. BOWES. I would cite another case showing the other complexities attending a rate on a commodity that everyone is concerned in, and that is the question of sugar rates. Along about a year and a half ago the eastern sugar refineries complained to their railroad connections, the complaints being lodged with the lines leading from Chicago to the western trunk-line territory, that the rate adjustment from New Orleans was working a hardship on the refineries located in New York and Philadelphia.

Senator FORAKER. The rate adjustment from New Orleans to where?

Mr. BOWES. To the western trunk line territory.

Senator FORAKER. Up to Chicago and out?

Mr. BOWES. I mean Missouri, all of Iowa and Minnesota—St. Paul and Minneapolis. There are lines running from Chicago to the Missouri River, to St. Paul and Minneapolis, that are not interested in the hauling of sugar traffic to the Gulf, and consequently they took up the question of a better adjustment of rates from the East as against New Orleans. That was the starting point of what we might call a controversy that extended until January of this year. After the eastern sugar refineries and the Chicago railway connections on the one hand, it immediately involved the sugar refineries in New Orleans and their railroad connections. That made four parties to this controversy right at the start. However, before we got through with it the jobbers located at the Missouri River, people located at Kansas City, Council Bluffs, Omaha, and Sioux City also took part in it. The question of beet-sugar rates from Colorado and the question of cane-sugar rates from San Francisco also came up for consideration. So we had, you might say, rate conditions relating to a territory extending from San Francisco to New York and from the Gulf to the Great Lakes.

A great deal of information and argument was presented by the refineries and by the railroad people serving the various refineries from the East and South, but it was evident that something had to be done to prevent utter demoralization of a large volume of traffic, and in order to make a settlement satisfactory to all of these interests these sugar refineries in the East, the sugar refineries at New Orleans, the refineries of the West, and the jobbers at the Missouri River, we had over 20 meetings. It was first taken up with the general freight agents. They could not settle it. It was then referred to the traffic managers of the railroads. They could not settle it. It went to the executive officers, the vice-presidents in charge of traffic; and they could not settle it. Arguments were submitted to them in line with those submitted to the others, but they could not settle it, and it finally had to go to the presidents themselves. At a meeing held in Chicago June 4 of last year it was thought that an adjustment could be made that would be satisfactory to all interests—the refineries in the different places and the jobbers on one hand and the railroads on the other.

Senator CULLOM. And it was this same case?

Mr. BOWES. It was this same case. Things worked along fairly well for a few months, when the flames broke out anew, and the railroads and some of the sugar refineries thought the adjustment was

not right. The presidents had to take hold of it again, and at a meeting held in Chicago, I think the latter part of last November, all the arguments were gone over again, the jobbers had their say, and they had appeared before the committee of railroads at several of their meetings, and it was thought that the following adjustment was satisfactory, and it was, to all interests. The rate from New Orleans was advanced 5 cents per hundred to Kansas City, 2 cents per hundred to Omaha, and 2 cents per hundred to Sioux City. The rate was reduced 10 cents a hundred from New York and Philadelphia to the Missouri River, to these cities.

So there is another case, gentlemen, where a substantial reduction on a large volume of traffic—a traffic entering into the every-day consumption—was made, and a slight advance made from another section. The maximum advance was 5 cents, in the case of Kansas City. The maximum reduction was 10 cents in the other case. Following that settlement of the difficulties, which had extended over a year and a half, a meeting of the rate clerks and the assistant general freight agents and some of the general freight agents was held to check in and line up the rates to all the interior points—like Cedar Rapids, Oskaloosa, Marshalltown, Fort Dodge, and many other points I might name in Minnesota and Iowa and on the Mississippi River. That meeting convened on December 14 and lasted until the evening of the 16th. Those gentlemen were engaged three days (there were 15 or 20 of them) in lining up, in getting the rates adjusted on this new basis to these different points, so that the jobber at these interior points would know what sugar was going to cost him and what competition he would have with his neighbor.

I mention that case for the purpose of showing what is consequent on a change in a rate. That is just one article—sugar. It took 20 men three days to line up the interior rates after the outline was fixed.

Senator FORAKER. The outline being fixed after several months?

Mr. BOWES. After a year and a half; it was that long after it was first considered before the adjustment was reached.

Now, I submit, how could any Government tribunal go through that process for the purpose of seeing whether freight rates were properly adjusted generally throughout all this country? It is beyond their capacity from any point of view. Those are two cases; one of them is very recent and involves a great deal, the other case having been considered some time ago, but involving in dollars and cents far more to the railroads than to the communities.

Senator FORAKER. Perhaps they would not take the trouble that you did. There being complaints from the refineries at Philadelphia and New York—wherever they are located in the East—as to the rate from there to Chicago, should they adjust that, and if they thought they were entitled to a reduction give it to them?

Mr. BOWES. Yes, sir——

Senator FORAKER. Then what would be the effect?

Mr. BOWES. Commercial upheaval and disorganization. Mind you, that is only one article in one section; what is to become of other complaints and many other articles from many other sections that the Commission may be receiving? That is only one, and yet see how long it took to get at the proper rate in that case! I mention this simply to show the complexities and the utter impossibility of the Government supervising rates.

Senator CULLOM. If it does not interrupt you——

Mr. BOWES. Oh, no, sir.

Senator CULLOM. If a community thinks a rate is wrong, they ought to have somebody to go to to see if the rate can not be righted. Now, it becomes a question whether it should be a commission or whether it should be through the means of the courts that the wrong, if there is one, should be righted. Suppose a court even finds that the rate was too high, that it was unreasonable, and then the Commission puts it down. The assumption is that the Commission would obey the court. If the court says the rate is too high, the Commission would put it down to some extent. Now, when that is lowered what is going to become of it?

Mr. BOWES. That one particular rate for that one particular locality?

Senator CULLOM. Yes; you are talking about particular rates now, and the change of one upsetting the whole country. I say, if the community thinks a rate is too high it ought to have somebody to appeal to to decide about it, and if that somebody is the court, and through the decision of the court the rate is lowered, the same effect will take place all over the country just as if the Commission should lower the rate.

Mr. BOWES. They have that power now, as I understand it, to take complaints before the Commission.

Senator CULLOM. They have the power to say a rate is unreasonable, but they can not go any further than that, so far as the Commission is concerned. I suggest that to you to show you that while your theory seems to be very strong, and possibly irresistible, yet it is a fact that once in a while a rate is lowered in one community and not in another.

Mr. BOWES. Conditions could not continue, Mr. Senator, under such an action, whether it was by court or not; the correlation, the interdependence of rates from these various localities would result in discrimination immediately at the other places.

Senator CULLOM. Now, do you mean to say that the rates you gentlemen work out are absolutely unchangeable in all particulars in every place?

Mr. BOWES. No; I do not, Mr. Senator. The conditions are changing constantly, and we try to adapt ourselves to those conditions as they change.

Senator CULLOM. I have no doubt you do, and I am not complaining of you, but I am suggesting that sometimes some place will find that the rates are too high, they think, and if they go into court or by any means get the rate reduced the same effect takes place all over the country that you described.

Senator FORAKER. If only the one rate is changed.

Mr. BOWES. Yes; we would have to change the other rates, although the other communities might not have complained.

Senator FORAKER. Take the complaint you acted upon—the refineries in the East complaining of the rate to Chicago. If that had gone before the court and the court had enjoined all above a certain per cent of what they were charging and that had gone into effect, you would have been compelled, of course, to put down the other rates?

Mr. BOWES. It might be that we could show, and I think the railroad people could show, what tampering with an adjustment means.

That is what we are afraid of. This question of adjusting freight rates relatively as to these localities occupies the daily attention of these traffic people; they devote their entire time to just those questions.

Now, the large majority of complaints from individuals and localities never reach the Interstate Commerce Commission; I do not think there is one in a hundred that ever gets there.

Senator CULLOM. What was that remark?

Mr. BOWES. I say that we receive daily, Mr. Senator, complaints from various shippers and localities who imagine that they have a grievance, who think the rate adjustment is not fair to them as related to the other fellow, and we can frequently explain it to them, and we frequently do explain it satisfactorily.

Senator CULLOM. I have no doubt about that.

Mr. BOWES. Those complaints are constantly before us and we give the necessary treatment to them. Of course, differences of opinion arise, for instance, between a shippers' association, a mercantile community, and railroad officials as to a certain adjustment. They can see only one side of it; we have to see the side for everybody. If the city of Omaha is going to get a rate from the East where we reach it, we have to see that Sioux City is lined up in the same way. Omaha does not care a particle about the prosperity of Sioux City, but we have to look after every one of them; we have to see that the rates are immediately put in line at Sioux City.

Now, those are the difficulties. I say that can not be done by any Government body; it can not be done and maintain the condition that exists to-day. I have heard some testimony, I have read some testimony in the papers, that the rate conditions since the passage of the Elkins bill are satisfactory. I feel I can positively and truthfully say that that is a fact. I do not mean to say we do not receive complaints, but the great mass of shippers, the great mass of jobbers, and the manufacturers of this country are in favor of the conditions remaining as they are.

President Parry, of the National Manufacturers' Association, at Atlanta yesterday made an address in which——

Senator CULLOM. I read his speech.

Mr. BOWES. You read his speech? Then you saw that he made a statement to the effect that he does not favor any change in present conditions.

Senator CARMACK. Do I understand your view to be that there should be no authority allowed to supervise and control railroad rates—that it should be left entirely to the railroads and their present managers; that the Government should not interfere with them in any way?

Mr. BOWES. No; I did not mean to convey that impression at all.

Senator CARMACK. How could you do it without creating this confusion you complain of?

Mr. BOWES. I say the power to fix a rate, which the Townsend bill, as I understand it, contemplates——

Senator CARMACK. Well, if you have rates adjusted generally and the court should find a certain rate was reasonable and anything above that unreasonable and enjoin any higher rate, would not that require this general readjustment of which you speak?

Mr. BOWES. I think I answered that question a little while ago. It would, in a little different manner. That would certainly follow, although we had no complaints from the other sections.

Senator CULLOM. But you would have to readjust other rates, too?

Mr. BOWES. Yes, sir.

Senator CARMACK. That would be an objection to the exercise of any power by the Government to change any rate from what it had been fixed by the railroad?

Mr. BOWES. I don't know that I could follow it in that way, as I see it, Senator. The difference between the present legislation and the proposed legislation is that it gives them the power to fix the rate. We submit, without any disparagement as to the personnel of the Commission or any commission that might be appointed, that we do not think they are competent——

Senator CARMACK. If you were required to change a rate from what it is—and unless that is done there is no relief at all in the matter of rates—that would require this general readjustment of which you speak, would it not?

Mr. BOWES. Certainly; if it happened to take up a particular rate such as I have described, it certainly would.

Now, I will put a case to you right on these lumber rates. If the rates on yellow-pine lumber were fixed by the Interstate Commerce Commission—and I might as well use that as a concrete case, to give my views on that feature of it, the dangers attending the power of the Commission to fix a rate absolutely——

Senator CULLOM. You have no objection to the law as it stands now, as I understand you?

Mr. BOWES. Not at all. We will take this lumber case referred to in this hearing, and concerning which there have been several witnesses, although I have not read the testimony. Mr. Robinson, who was here yesterday, made reference to it. He was one of the principal complainants in regard to the advance. I would take that case to illustrate how a railroad company must feel with regard to empowering a commission to fix a rate. Their complaint was that we had advanced the rate on lumber 2 cents a hundred pounds from points in Mississippi and Alabama to the Ohio River. This complaint was filed by the Central Yellow Pine Association. The Georgia Saw Mill Association also filed a similar complaint before the Interstate Commerce Commission on similar grounds. Hearings were had in New Orleans and Washington, and they were concluded a year ago last March in this city.

I will take Chicago to illustrate the position of the railroads and the trend of our arguments in support of the advance. I filed a schedule of the rates. Anyhow, as part of my testimony, it is accessible to you. I do not recall specifically the date, but I think it was twelve or fourteen years ago, the rate of yellow-pine lumber from Mississippi, where Mr. Gardner and Mr. Robinson have their mills, and from where we ship the larger part of our yellow-pine lumber, to Chicago, was 27 and 30 cents a hundred. To-day the rate is 26 cents per hundred. Along about 1893, or during the times of depression incident to the panic of that year, building was at a standstill, so to speak, and the lumber industry, in common with other building lines, was not prosperous. They were unable to market the products of their mills.

The railroads, realizing that the interests of the lumber men were their own interests, came to their relief and voluntarily reduced the rate on lumber down to 22 cents per hundred pounds. It was first reduced to 24 cents, and shortly thereafter to 22 cents à hundred pounds. The rate of 22 cents (the rate is now 26 cents) remained in effect for many years. As I recollect it, the first advance in that rate was in 1898, and at that time it was advanced but 1 cent per hundred. In 1899 or 1900 another cent advance was made. In the meantime the lumber industry was flourishing. In fact, they could not supply their orders. Along in 1903—April 15 of that year—we advanced the rate 2 cents more, to 26 cents per hundred. The conditions had entirely changed. The period of depression had been passed for a number of years, and the reason for our action at that time—in April, 1903—was to partly cover the increased cost of operation brought about by the enormous increase in wages. As I recollect it, testimony was given that the increase in wages per annum alone represented 1 per cent on our capital stock.

The price of material, the price of supplies, everything else, had proportionately advanced; the price of lumber that we used, of course, had advanced. It was thought by us and the other railroads that it was not unfair to make this 2 cents advance, in view of the enormous increase in operating expenses, and we did make the advance. It was not the only article we had advanced; we had taken up other commodities; but I would like to impress upon you gentlemen that when we advanced we did not get back to the rates in effect many years ago of 27 and 30 cents. But in the opinion rendered by the Commission that part of the argument is utterly ignored. The question of our operating expenses, and so forth, having increased so greatly was not taken into account, but they came out and decided that the rates were unreasonable and should not have been advanced 2 cents per 100 pounds.

Senator FORAKER. That was by a vote of 3 to 2, I believe.

Mr. BOWES. I was going to say that that was not the unanimous opinion, but was decided by a vote of 3 to 2, the chairman and Commissioner Fifer dissenting. When it became known to some of the lumbermen that the rates were to be advanced Mr. Gardner called on me at my office in Chicago, and before that advance took place——

Senator CULLOM. Who is he?

Mr. BOWES. One of the gentlemen who appeared here the other day.

Senator FORAKER. A lumberman from Laurel, Miss.

Mr. BOWES. Mr. Gardner said to me, "I think you make a mistake in advancing the rate 2 cents a hundred; I think, however, that 1 cent would be all right." He was one of the leading parties in the prosecution of this complaint against the railroad companies, and yet in the face of the statement of that lumberman himself, that 1 cent advance would be all right, the Interstate Commerce Commission did not pay any attention to that, did not take any notice of that. It does seem to me that it ought to have some bearing on whether the advance was proper or not.

Senator CLAPP. Did he admit that in the proceedings?

Mr. BOWES. I do not think that was developed.

Senator CLAPP. What I was getting at was whether that was brought to the attention of the Commission.

Mr. BOWES. I can not state positively about that, but we have a letter to that effect.

Now, if the Commission had the power to fix a rate as contemplated by the Esch-Townsend bill, and they had reached the same conclusion, it would have meant, gentlemen, the confiscation of railroad property to the extent of hundreds of thousands of dollars per annum, and so far as we are concerned would amount in dollars and cents to more than all the adverse decisions of the Interstate Commission where the Illinois Central Railroad Company was involved. We think, consequently, it is dangerous to put such an extraordinary power in the hands of a tribunal of that kind that can be decided by so small a margin—by a majority vote.

Senator CLAPP. What was the result of that decision?

Mr. BOWES. It is in the courts at the present time.

Senator FORAKER. Is this a convenient place for you to stop until to-morrow?

Mr. BOWES. It is. I will not take up very much time in the morning.

Senator KEAN. There is a gentleman here by the name of Mr. Brown, and one or two others, who would like to be heard, and I will stay and hear them.

Senator CULLOM. I have a letter here from Chicago that I think is of some importance, and I ask that it be made a part of the record.

THE CHICAGO LIVE STOCK EXCHANGE,
Union Stock Yards, Chicago, Ill., May 15, 1905.

To the Senate Committee on Railroad Legislation:

GENTLEMEN: The Chicago Live Stock Exchange desires to present for the consideration of your honorable body the claims of its patrons and constituents numbering nearly 2,000,000 of the best citizens of the United States. This organization is located at the Union Stock Yards, Chicago, and is made up chiefly of men actively engaged in buying and selling live stock at that point, which is the largest live-stock market in the world. The exchange numbers about 700 active members, and includes the live-stock commission salesmen, who handle almost all of the live stock sold at Chicago to the annual value of over $270,000,000. In handling this business, it directly represents the entire live stock producing interests of the wealthiest agricultural section of the United States, including Illinois, Indiana, Wisconsin, Iowa, Missouri, Nebraska, Minnesota, North and South Dakota, Kansas, Colorado, Wyoming, and, indirectly, many other States.

For the past eleven years this exchange has been fighting for its patrons' interests against the extortion by the railroad companies in the matter of the "terminal charge" of $2 per car, which, on June 1, 1894, was added to the freight on each and every car of live stock shipped into or out of the Union Stock Yards of Chicago on western railroads. This amount was put on by the railroads to cover a charge varying from 80 cents to $1.50 per car, begun at that date by the Chicago Junction Railway Company for the use, by the various railroads, of tracks connecting the terminals of said roads with the Union Stock Yards and owned by the Junction Railway Company. A storm of indignation arose, every shipper protested, and the Chicago Live Stock Exchange, on behalf of those shippers,

at once instituted proceedings to remove the charge. The matter was brought before the Interstate Commerce Commission as the proper tribunal to give redress and, notwithstanding the efforts of the railroads, its decisions have always been favorable to the exchange, and at least one-half of the charge declared unjust and unreasonable. The United States Supreme Court confirmed the Commission's view, as appears from the following extract taken from page 14 of the report of Case No. 154, October term, 1901, delivered June 2, 1902:

> It needs no reasoning to demonstrate that the Commission correctly held that the mere imposition by the Stock Yards Company of a new burden, averaging $1 per car, did not justify an additional charge of the carriers of $2 per car. It is likewise equally plain that if the prior rate was just and reasonable, as the Commission found it to be, that the addition, without reason, of $2 per car caused the rate to become unjust and unreasonable to the extent of $1 extra.

The exchange, however, has never been able to prevent the continued collection of this charge by the railroad. The hundreds of thousands of men who have suffered for eleven years and are still suffering this extortion feel that some means should be devised for their protection. There have been over $6,000,000 taken from them under this charge without one cent of additional benefit.

In addition to the terminal charge matter, and again representing the interests of the producers, the Chicago Live Stock Exchange on April 5, 1902, brought before the Interstate Commerce Commission the matter of the excessive rates charged on live stock from western points to Chicago over the rates charged on packing-house products. This was case No. 618. The Commission decided that the rates on live stock from certain western points to Chicago were unjust and unreasonable as compared with the rates on packing-house products, and issued an order to the defendant railroads on January 7, 1905, to cease and desist from collecting such charges. Again, the defendants willfully disregarded the ruling of the Commission and continued to collect those excessive rates. Irrespective of political party, the patrons of this exchange have determined that they are entitled to a square deal, and that in the making of railroad rates generally what is fair and just to both sides should be considered. It is with no spirit of antagonism to railroads that the Chicago Live Stock Exchange urges the enactment of legislation that will insure equity between the railroads and their patrons. It is evident that if the rate-making power be vested without control in the railroads rates will be too high, while if placed in the hands of the patrons of the roads they would be too low. It should be possible to so extend the power of the Interstate Commerce Commission as to afford a check on unjust and unreasonable rates without taking from the railroads the proper power and legitimate control of their affairs. The patrons of the Chicago Live Stock Exchange owe as much to railroads as does any class in the community, but the feeling among them is universal that a fair and reasonable protection is their due and that a governmental control should be established by which prompt and equitable adjustments of rates should be assured to both sides. It is not advised or even suggested that the rate-making power be taken from railroads, but the people represented by this exchange demand that some properly constituted representative of the Govern-

ment, whether it be the Interstate Commerce Commission or other body, shall have the power, upon proof of unjust or extortionate rates, to correct such rates and enforce proper ones, subject to appeal to the courts. There is no more striking instance of extortion by railroads than this terminal charge. There is nothing to prevent the imposition of another such outrage at any moment. Its victims feel that it is high time steps were taken for their protection, and that such protection can only be afforded through Congressional action.

Very truly, yours,

THE CHICAGO LIVE STOCK EXCHANGE,
M. P. BUEL, *President.*

Attest:
C. W. BAKER, *Secretary.*

J. W. MOORE,
JOSEPH ADAMS,
JOHN T. ALEXANDER,
EMIL H. MYNUSEER,
O. J. SHANNON,
I. L. WOOD,
J. M. WELSH,
Railroad Committee.

STATEMENT OF MR. C. M. BROWN, ORANGE GROWER AND SHIPPER, OF REDLANDS, CAL.

Mr. BROWN. I only want to say a few words. I will not attempt to express my views from any lawyer's standpoint, but simply from the standpoint of the grower. I am a grower myself and handle fruits——

Senator CULLOM. You are a shipper as well as a grower?

Mr. BROWN. I work on a salary for these other growers. Mr. Paul Morton came out to our country a short time ago, and in talking about the situation he said: "What will we have to do with this lemon business; they tell us that the lemon industry is going to pieces; do you have to have a rate of a dollar a hundred?" And I told him, by all means we did have to have it, otherwise the industry would be ruined; and they did make a rate of $1 a hundred to the lemon growers. As you know, the lemon industry is a great deal like the orange industry; it is a citrus fruit.

Senator CULLOM. Do they not keep better than oranges?

Mr. BROWN. No; I think not. The foreign lemon may keep longer. So far as the California business is concerned, I have been in it twenty years, and there is absolutely no difference in the freight rate, and there should be. The orange business is paying a little more. We have begged them to give us a cheaper freight rate, but they would not listen to any appeal that we have made to them. When the Interstate Commerce Commission gave us a decision in our favor we had no recourse—or so we were told, at least.

I do not come here, gentlemen, to tell you what to do, but I do ask you to help us, if there is any way you can help us.

I listened this morning to a great deal of complaint about the private-car lines. I want to be fair to the car lines and to the railroads. We have excellent service in California from the private-car

line people, especially from the S. P. people. I do not know why the jobbers complain, because they do not pay the freight; we pay the freight. We lay our oranges down in Boston, and pay the freight there. They publish a schedule of freight rates and icing charges. I have it tacked up in my office. We know what the icing charge is to every point in America and Canada, and every other shipper knows it also.

Senator CULLOM. Armour & Co. furnish you with private cars?

Mr. BROWN. Yes, sir. These schedules, showing the rates to all the towns in the country, are tacked up in our office, and, as I have said, they furnish every other shipper those rates. We endeavor to charge every jobber the same price for the same commodity. If we did not know the tariff to St. Paul, or Minneapolis, or Quebec, or any other point, how would we know what our commodity was worth in that market? We endeavor to ask the same price in each market. I am located absolutely in the S. P. Company, so I can have the superior facilities of the Armour Packing Company.

Senator CULLOM. You have no complaint against the car lines or the railroads either?

Mr. BROWN. Yes, sir; the Interstate Commerce Commission has found that the rate on oranges is excessive, and therefore I ask for some method to be perfected whereby we can enforce the findings of the Interstate Commerce Commission. I am willing to abide by the Interstate Commerce Commission's decisions.

Senator KEAN. Then we understand you that you are in favor of the icing charges as at present existing; you are in favor of the charges of the private car lines, but you are opposed to the charges of the railroad companies at present?

Mr. BROWN. I am. We want the Interstate Commerce Commission's findings to be enforced; that is what we want. If we can get another hearing, if we can get them to agree that the icing charge is too high, of course we would like that charge made lower. I will tell you very candidly that we want everything in our favor as much as possible; there is no use to beat around it. The fact is, if I can get a rate of 50 cents a hundred I want to get it. Of course the railroad companies can not haul for nothing. I know they have to pay their expenses; but we believe that we are entitled to some relief, and if they can haul lemons for a dollar a hundred they can haul oranges for a dollar a hundred. They used to pay us $35 rebate, and the railroad companies do not give away money for nothing. They have told me that the eastern roads got less than 50 per cent of the division, and if they do and can afford to pay us $25 or $35 a car on that percentage of it, is it not a fact that on the whole percentage they could haul cheaper? They paid us those rebates, and every one of them would stand in line to get to talk to us—for that $35 a car, with cash in hand, too. We did not have to wait for it. That is what they did for us, and if they could afford to do that when we shipped 10,000 or 12,000 or 15,000 cars, they certainly could afford to do something more for us when we are shipping 30,000 cars, as we are now.

Senator CLAPP. What is your firm?

Mr. BROWN. The Redland Orange Association.

Mr. BLACK. I suppose it is the best orange in California.

Mr. BROWN. Yes; it is. While I perhaps should not say that I

know the orange business as well as anybody, yet, if you want to know anything about the business I believe I can tell you what you are desirous of knowing. In conclusion, I want to say this: Do by the railroad people as they should be treated; but treat the grower as he must be treated, or he must go out of business; that is all.

STATEMENT OF MR. JOSEPH BARTLES, OF ST. PAUL, MINN.

Senator KEAN. What is your business?

Mr. BARTLES. I am in the oil business.

Senator KEAN. What kind of oil?

Mr. BARTLES. Burning oils.

Senator KEAN. Illuminating oils?

Mr. BARTLES. Yes, sir; illuminating oils and burning oils.

Senator KEAN. What is the extent of your business?

Mr. BARTLES. We only commenced business two and a half years ago. We sold from the 1st of May to the 1st of May about 12,000 barrels.

Senator KEAN. Proceed with your statement.

Mr. BARTLES. I merely want to state that we feel in St. Paul and Minneapolis that we are hardly treated fairly by the railroads in bringing oil to St. Paul and Minneapolis. The rate for the past ten years has been 20 cents a hundred. It is a commodity rate. That is the fifth-class rate, but it is a commodity rate; the rate is 20 cents a hundred. In 1889 the rate was either 12 or 15 cents. I have not been able to get that because that was some time ago and the railroads do not seem to have the tariffs. But occasionally the railroad companies would get into a controversy and they would openly reduce the rate to 10 cents a hundred. About 1895 the rate was raised to 20 cents, and it has been 20 cents ever since.

In our own State we have our railroad and warehouse commission and the independent oil dealers (there are 9 of them in St. Paul and Minneapolis) have taken up with them the question of reducing the classification. It is now third class. Our principal competitor is, of course, the Standard Oil Company. When the rate was raised to 20 cents the railroad companies all told us that the Standard Oil Company were very anxious to have the rate raised to 20 cents. They have said all along that the Standard Oil Company did not make any objection to it, and, of course, we feel that the Standard Oil Company must get some concession on that rate. The rate from St. Paul to Fargo is 26 cents. The rate through from Chicago to Fargo is 26 cents and 20 cents, making 46 cents, it being 20 cents from Chicago to St. Paul; but it is 41 cents for the through rate, and the stuff is brought right through St. Paul. Of course, that is a little concession. The local rate or the third-class rate, as I say, we have up now with the railroad and warehouse commission, and we feel that they will reduce the classification so as to enable us to compete. While the rate is 20 cents the Standard Oil Company does not make their prices based on the freight rates. For instance, their price at St. Paul the middle of April for water white oil was 8 cents; at Fergus Falls it was 12 cents. It cost them 1⅓ cents a gallon to ship oil to Fergus Falls in cars when they have the stuff, so if they made their prices on the freight rates it would be 9⅓ cents instead of 12⅓ cents. They make their price at outside points on what it costs us to ship

oil in carload lots. Of course, if we ship a carload they cut their price.

Senator KEAN. Where do you get your oil?

Mr. BARTLES. From Pennsylvania; we get it altogether from Pennsylvania. We pay 19½ cents to Chicago; we pay 20 cents from Chicago to St. Paul.

Senator KEAN. The Standard Oil Company has a pipe line to Chicago, has it not?

Mr. BARTLES. They pipe all their oil into Chicago; yes, sir; and ship everything sold in the West from the Whiting refinery. I think we showed to the satisfaction of our State railroad and warehouse commission that if they reduced the classification on oil from the third to the fourth class it would effect a reduction of a cent a gallon. Now, there are about 28,500,000 gallons of oil consumed in a year in the State of Minnesota; about 5,000,000 gallons are consumed in St. Paul and Minneapolis.

Senator KEAN. What is the average price of oil?

Mr. BARTLES. In St. Paul and Minneapolis?

Senator KEAN. No; scattered around the State.

Mr. BARTLES. At Fergus Falls, 12 cents; Ortonville, 12 cents; Farmington, which takes the same rate as St. Paul, 10 cents; Hastings and Hudson, 9½ cents. They take the same rate as St. Paul. It costs us a cent a gallon to ship there. So they make the price just what it costs us to ship in less than carload lots.

Now, what we feel is that there should be some power to regulate interstate rates for interstate commerce. We can protect ourselves locally. The Iowa classification was reduced in December, making oil in less than carload lots fourth class. The Missouri classification was reduced, making it fourth class, taking effect the middle of April. The North Dakota and South Dakota commissioners were at St. Paul at the hearing of our case, and I think if the State Warehouse Commisison reduces the rate North and South Dakota will also reduce it.

Senator KEAN. Then your fight is practically with the commission in Minnesota?

Mr. BARTLES. That is only on our local shipments, but shipments coming from Pennsylvania should be regulated—the rate should be regulated. We ship from Oil City, from Warren, and from Coraopolis, and of course the commission of Minnesota has no control over those rates.

Senator KEAN. Do you think the rate on oil is too high?

Mr. BARTLES. I think the rate on oil is altogether too high.

Senator KEAN. Have you ever made a complaint to the Commission?

Mr. BARTLES. No, sir; we have not. We have not made a complaint to the Interstate Commerce Commission.

Senator KEAN. When did you first discover that the rate was too high?

Mr. BARTLES. I was with the Standard Oil Company for twelve years as their manager. I did not complain of it then, of course.

Senator CLAPP. Well, how much would you say it was too high now from Pennsylvania to St. Paul?

Mr. BARTLES. Five cents. We are perfectly willing to pay a rate of 15 cents, and we have asked the railroads there to reduce it. We

addressed a letter to them asking them to reduce the rate to 15 cents. They told us at their meeting in April that it would be considered at their meeting in May; and then the May meeting, they wrote us, had been adjourned until June.

Senator KEAN. So you still have a chance in the June meeting?

Mr. BARTLES. Yes; we have a chance.

Senator CLAPP. What is the rate from Chicago to St. Paul on oil?

Mr. BARTLES. Twenty cents; it is a special classification.

Senator CLAPP. Do you think that anyone is getting a less rate between Chicago and St. Paul than you are getting?

Mr. BARTLES. Yes, sir.

Senator CLAPP. That is what we want to get at.

Senator KEAN. Why do you think so?

Mr. BARTLES. For the very reason that the Standard Oil Company asked to have the rate advanced to 20 cents; it was put up to 20 cents at their direct solicitation.

Senator KEAN. How do you know that?

Mr. BARTLES. I know that from the fact that I have been told that by the railroad companies, or officials of the railroad companies; they have all said to me, "Why, the Standard Oil Company asked to have this rate advanced."

Senator KEAN. Is not the fact that they are satisfied with the rate of 20 cents accounted for, at least in part, by the fact that they pipe their oil to Chicago and therefore it stands them much less, they are enabled to sell much cheaper in St. Paul in competition with you?

Mr. BARTLES. Well, I do not see that that would be——

Senator CLAPP. Let us get this straight. What is the rate from Pennsylvania to St. Paul?

Mr. BARTLES. Thirty-nine and one-half cents.

Senator CLAPP. Thirty-nine and one-half cents for all that distance, from Pennsylvania to Chicago and from Chicago to St. Paul?

Mr. BARTLES. Yes.

Senator CLAPP. And you think the rate from Chicago to St. Paul ought to be reduced?

Mr. BARTLES. Yes, sir. When it was raised from Pennsylvania points from 17½ cents to 19½ cents, a raise of 2 cents, it was raised from 12 cents and 10 cents to 20 cents from Chicago to St. Paul.

Senator KEAN. Is not the 20-cent rate a pretty low rate anyway?

Mr. BARTLES. No; it is not.

Senator KEAN. I asked that because they used to burn oil in St. Paul, and I know that the Minneapolis Street Railway at one time used oil under their boilers.

Mr. BARTLES. Yes; but that was when the Ohio crude oil was worth only about 25 cents a barrel. It has been up to $1.20 since then.

Now, referring to the lake rate, they have oil as a special classification. The Standard Oil Company does not ship lubricating oil by the Lakes for the reason that it ships it by tank cars and stores it—receives it in bulk. Last month we ordered a carload of mineral castor oil from Cleveland. The classification on castor oil, or vegetable castor oil, is fifth class, or 16½ cents. We have a special brand. So I told them to brand it "castor oil," and then we would put the other brand over that. It was shipped as castor oil, and it came through at 16½ cents. If it had been branded "Minnesota" above that, it would have cost us 25 cents. It came through at 16½ cents

just because it was branded simply "castor oil" and billed as "castor oil."

Senator KEAN. And was it castor oil?

Mr. BARTLES. Yes; mineral castor oil.

Senator KEAN. Were you practicing a deceit?

Mr. BARTLES. No; I did not know of those rates at that time, and I did that simply because we have several brands. We sell it to the jobbers and we put their brands on it, and I just had it branded "castor oil;" I did not know what rates there were for it; I had not looked at the rates at that time. I knew the lake rates were lower——

Senator KEAN. Well, what would you like done?

Mr. BARTLES. We would like to have some relief.

Senator KEAN. How?

Senator CLAPP. Give us your views as to what ought to be done.

Mr. BARTLES. Well, we think that the Esch-Townsend bill or some bill of that nature ought to be passed.

Senator KEAN. You think that would reduce the freight on oil from Chicago to St. Paul from 20 cents to 15 cents?

Mr. BARTLES. It could be done under that; yes, and I think it probably would be done.

Senator KEAN. Why could it not be done now, if it is unreasonable at present.

Mr. BARTLES. Possibly it can be done; I do not say it can not.

Senator KEAN. Is that all you have to say?

Mr. BARTLES. That is practically all, and I thank you, gentlemen of the committee, for your attention.

STATEMENT OF MR. PATRICK G. BURUM, AUGUSTA, GA.

Senator KEAN. Please state your business.

Mr. BURUM. My business is the milling business and produce.

Senator KEAN. And whom do you represent?

Mr. BURUM. Myself and the greater part of the milling interests of Augusta, and several wholesale merchants. I do not bring credentials from these people, but they met me on the street before I came here and told me that they all could not come and they would like me to speak for them.

Senator KEAN. What is the tonnage of your mill and those you represent?

Mr. BURUM. We turn out about four carloads a day.

Senator KEAN. You and the people you represent?

Mr. BURUM. Yes, sir; about four carloads a day in the milling business, and I think the merchants I represent must handle fully that much or more.

We are perfectly satisfied, gentlemen, with the way things are moving along now; we do not see how there can be any change to any advantage. We are perfectly satisfied that these men who have been engaged in the railroad business for years making rates for us are the best men to make the rates. We have never had any trouble with them to speak of. We have never received, to my knowledge, a rebate, nor have we been bought by low rates of freight. Our rates, we think, have been fair to us and fair to the railroad companies, and we are satisfied with the rates that they have given us.

Senator KEAN. You think the rates are fair and reasonable?

Mr. BURUM. Yes, sir; I do.

Senator KEAN. And you have no complaint to make?

Mr. BURUM. There may be some few rates that are too high, but you can not adjust them all at once.

Senator KEAN. And you are satisfied with the present condition of affairs?

Mr. BURUM. I am satisfied with the present condition of affairs; that is what I would like to state.

STATEMENT OF MR. GEORGE L. BAKER, OF COLUMBIA, S. C.

Senator KEAN. What business are you in?

Mr. BAKER. I am in the business of manufacturing ice and selling coal.

Senator KEAN. And where are you located?

Mr. BAKER. Augusta, Ga., and Columbia, S. C.

Senator KEAN. Go ahead with your statement, Mr. Baker.

Mr. BAKER. We handle about 20,000 tons of coal and our ice business is mostly local. I have been here to-day, gentlemen, hearing the arguments which have been made, and I feel a little out of place because I have no complaints to make. Our railroads down our way have treated us absolutely fairly; they have come to our assistance when we have needed assistance. I have never received or heard of a rebate being paid to any one of my contemporaries. I have been in the cotton-seed oil business in my State for twenty years and I have never heard of a rebate being offered or paid. I feel a little embarrassed, as I have said, by reason of the fact that I have no complaints to make against the railroad companies. I am here strictly for the purpose of advocating that present conditions should be let alone. That is my position, and I represent my own interests alone.

Senator KEAN. You state that you are in the ice business.

Mr. BAKER. Yes, sir; I am in the business of manufacturing ice.

Senator KEAN. What does it cost to manufacture ice at Columbia?

Mr. BAKER. We have not separated the cost except as to the gross cost. The gross cost is about $3 a ton.

Senator KEAN. That is manufactured ice?

Mr. BAKER. Manufactured ice put into the refrigerators of our customers.

Senator KEAN. Have you ever furnished any ice to the refrigerating plants of these railroads or these different refrigerating companies?

Mr. BAKER. Yes; we do all of that business that is done in our territory.

Senator KEAN. What price do you charge them for ice?

Mr. BAKER. $3.50. Their ice does not have to be carted, you know, as the ice in the retail trade has to be.

Senator KEAN. That is, manufactured ice at $3.50 at Columbia, S. C.?

Mr. BAKER. Yes, sir; Columbia and Augusta, Ga.

Senator KEAN. Did you say $3 a ton to the retailer?

Mr. BAKER. No; $3 is the cost to me of making the ice and putting it in their boxes.

Senator KEAN. That is, you sold it to the refrigerating company for $3?

Mr. BAKER. No; $3.50 in their bunkers; that is the expression.

Senator KEAN. What do you sell it to the public for?

Mr. BAKER. To the public the price ranges from 30 cents a hundred to 40 and 50 cents for cut ice, and 25 cents in larger quantities.

STATEMENT OF GODFREY L. CABOT.

The CHAIRMAN. You will please state your name and residence.

Mr. CABOT. Godfrey L. Cabot; I reside at Boston, Mass.

The carbon-black makers of this country, of whom I am myself the largest in point of output, have for sixteen years been hampered by the high and increasing freight charges, resulting from the arbitrary changes in the freight classification of this commodity at the very time when the general tendency of prices has been downward, as also the cost of transportation. This commodity is the chief raw material for black printing ink in this country, and is also largely exported for this and other purposes to Europe, Asia, Africa, and Canada.

With a reasonable freight classification, such as we enjoyed sixteen years ago, we could in a few years increase three or four fold the present export business, in competition with the cheaper lampblacks of Germany and other foreign countries, and for reasons which I shall hereafter point out I believe this change would be accompanied by an increase in the net earnings of railroads.

Carbon black was first put on the market in the year 1872, at $2.50 per pound. It rapidly fell in price, and I was told by Mr. A. V. Nolen, formerly the chief maker, that prior to the first official classification he obtained a rating of first-class rates less than carload and third classification carload, the value being then about 60 cents a pound. In the first classification, in the year 1887, the less than carload classification had been raised to one and a half times first class, but the carload rate had been lowered fourth class, the value being then about 10 cents per pound. On the 15th of July, 1887, the carload classification was lowered to sixth class, the same as other forms of dry paint, in which category and no other carbon black properly belongs.

As a professional chemist, educated in the best institutions of learning in this country and abroad, I say, without fear of contradiction by any chemist or color maker of standing, that no commodity can be more properly described than carbon black, and if the classification of 1889 was now in force there would be no serious complaint, for the business is now mostly done in carload lots, and the extraordinarily high less-than-carload rates would not seriously affect the general business.

At first this commodity was packed in barrels holding each 40 pounds, of which only 10,000 pounds could be placed in one car. In 1889 the standard weight of a package was 50 pounds net, or 70 pounds gross, and the present standard weight in barrels is 75 or 80 pounds net, or about 100 gross, but most of the black is now shipped in paper sacks, which are sometimes packed in wooden cases, and the result is that whether in barrels, cases, or sacks it is now possible to put from 20,000 to 25,000 pounds in a car, and were the classification lowered and the minimum carload weight correspondingly increased

most of this business would be done in carloads of over 20,000 pounds, whereas under present conditions it is mostly done in carloads of 10,000 pounds, yielding the railroads no better net revenue, even at the higher rate, and greatly reducing the average freight that must be borne between the consumer and the producer.

From July 15, 1889, to January 1 of this year the classification continued to be once and a half first class in less than carload lots, third class in carload lots, approximately twice the freight required between 1887 and 1889. Meanwhile the price had declined, and on the 1st of January last I was offering carbon black of good merchantable quality at 4 cents f. o. b. Boston. On the 1st of January the classification was again raised, to class 2, rule 25, an increase of about 10 per cent in carload lots. Numerous efforts have been made by myself and others to have this commodity classified where it belongs, as dry color, but the only result has been the reverse of what we desired, and the industry has been and is in a somewhat precarious condition, as we have contracted for millions of pounds of black at prices fixed at the point of delivery and had no notice of the raise in freight rate until subsequent to its going into operation. This, our experience, indicates the necessity of Government supervision, not merely of freight rates but of freight classification and all other matters relating to the transportation of freight.

I have been for about twenty-three years continuously the owner of railroad securities, particularly in the so-called "granger roads," which were affected by the legislative interference of various Western States in the seventies and eighties of the last century. I was never able to discern any permanent injury to my investments by legislative acts, but I knew many conspicuous instances of very serious injury to my investment by dishonest and self-interested management of the directors of various roads, notably the Atchison, which was robbed of large sums directly or indirectly on five or six several occasions. I believe that Government supervision and a quicker and a more effective remedy for shippers will to an appreciable extent increase the difficulty of certain forms of dishonesty in railroad management and remove the temptation to rebates and discriminations, deleterious, not only to the general public and to the shippers adversely affected thereby but also to the railroads themselves and their shareholders.

It is a notorious fact, proved in many lawsuits, that large refining interests along the lines of the Pennsylvania Railroad at Pittsburg and other places were put out of business by secret rebates to a Cleveland corporation, ultimately resulting in very great loss to the railroad itself. Similarly in Kansas the railroads recently raised their freight rates on oil to a prohibitive point, putting out of business certain independent shippers for the benefit of certain pipe lines, and thus depriving the railroads themselves of a lucrative business. Luckily for the shareholders in these railroads, as well as the general public, and the independent shippers, the State legislature intervened and imposed upon the railroads a freight rate that permitted the immediate revival of these independent shippers.

If these rates imposed by the legislature are so low as to deprive the railroads of a reasonable profit they have a remedy immediately effective by injunction by the United States court, but to the best of my knowledge and belief no attempt has been made to secure

such relief, thus tacitly admitting the justice of the legislative enactment. It seems to me a fair inference that, in the instances above mentioned, improper means were used to induce railroad officials to injure the interests confided to their care, as well as to do injustice to outsiders, and such evils will be less frequent with more prompt and effective Government supervision. If a merchant loses money by his business transactions with a given person or firm, he can, in most cases, cease to do business with them and ultimately obtain redress through the courts, but where the party is a railroad controlling his sole means of access to the markets in which his goods are sold delay spells ruin, hence the need of special machinery to expedite relief.

Judging from my observations in Europe, where the method of government ownership has been thoroughly tried, this would be a worse evil than any under which we now suffer. The coal of Westphalia is delivered over government railroads in Italy cheaper than in Switzerland, a gross economic injustice. The railroads are unprogressive, uneconomical, arbitrary, and irresponsible. In Australia the progress and liberties of the country are seriously endangered by the political-labor organization, which tramples upon the individual and deprives him of his most precious rights, and to my mind the strongest argument for a more prompt and effective government supervision is to allay popular discontent that may otherwise plunge us in the intolerably worse evils of paternalism. We have by far the greatest and most economical railway system in the world. I would do nothing to check its growth or deprive it of the means and opportunities of further development. I would simply render more effective, economical, and prompt the remedies of shippers against these abuses which will from time to time arise in all human affairs.

Thereupon, at 5.25, the committee adjourned until to-morrow, Thursday, May 18, 1905, at 10 o'clock a. m.

[Senate Document No. 257. 58th Congress, 2d session.]

ADVANCE IN FREIGHT RATES, ETC.

Letter from the Interstate Commerce Commission transmitting, in response to Senate resolution of March 11, 1904, a report of the Commission relative to the advance in freight rates and the resulting increase in revenue of the Railway corporations of the United States during each of the fiscal years ending June 30, 1900, 1901, 1902, and 1903, and also a report showing the changes in cost and maintenance of said railways for said years.

INTERSTATE COMMERCE COMMISSION,
Washington, April 7, 1904.

SIR: The Interstate Commerce Commission herewith respectfully submits the following report in compliance with the resolution of the Senate of the United States, adopted March 11, 1904, which reads:

Resolved, That the Interstate Commerce Commission is hereby directed to furnish the Senate, as speedily as may be practicable, a report showing the principal changes in railway tariff rates, whether resulting from the adoption of new rates or the amendment of freight classifications, and an estimate of the effect of such changes upon the gross and net revenues of railway corporations in the United States during each of the fiscal years ending June thirtieth, nineteen hundred, nineteen hundred and one, nineteen hundred and two, and nine-

teen hundred and three, as compared with the gross and net revenue that would have been derived by them under the rates and freight classifications in force during the fiscal year ending June thirtieth, eighteen hundred and ninety-nine; and also report the changes in cost of operation and maintenance of said railways for said years.

A statement prepared by the auditor of the Commission shows the principal changes in rates caused by changes in freight classification and the advances in rates on a number of specified commodities. Most of these changes took place during the year 1900, but some commodity rate changes occurred between that year and the end of 1903. For the reasons indicated in the statement no more specific or comprehensive account of rate changes can be given.

The resolution directs the Commission to furnish an estimate of the effect of such changes in rates upon the gross and net revenues of railway corporations in the United States during each of the fiscal years ending June 30, 1900, 1901, 1902, and 1903, basing the comparisons upon the gross and net revenues they would have derived in those years under rates in force during the fiscal year ending June 30, 1899. As far as practicable the statement of the auditor is in conformity with such requirement, and following this statement is a table showing, for each of the years mentioned, what the gross revenue of the railways would have been if the average rate per ton received by all the railways in the fiscal year 1899 had been applied to the tonnage carried over such railways in the succeeding fiscal years to and including 1903. As to a few staple commodities the increase in revenue due to advanced rates in effect during specified periods is estimated in the statement mentioned substantially in accordance with the method of calculation directed in the resolution.

No similar calculation can be made respecting net revenue for the reason that the net revenue of a railway depends not merely upon gross earnings, but also upon cost of operation, which may be varied by numerous conditions, including the density of traffic as well as the aggregate tonnage.

From what has been stated it must appear that no accurate or even approximate estimate of the actual effect of specific changes in rates upon the revenues of the carriers can be made. The best that can be done is to indicate the rate changes, and then, without using them as factors, show by yearly tonnage and earnings and the average rate per ton for the year 1899 results similar in character to those called for by the resolution. This method of computation is not without value as indicating enormous additions in recent years to the cost of railway transportation to the people of the United States.

The statement and table above mentioned constitute Part I of the appendix hereto.

The resolution also directs the Commission to report the changes in cost of operation and maintenance of United States railways for the years therein mentioned. Except for the fiscal year ending June 30, 1903, this information is contained in a table prepared by the statistician of the Commission, which will be found herewith as Part II of the appendix. The returns for the fiscal year 1903 have not yet been compiled, and the figures relating to the cost of operation and maintenance for that year must therefore be omitted from this report.

All of which is respectfully submitted.

MARTIN A. KNAPP, *Chairman.*

The PRESIDENT OF THE SENATE OF THE UNITED STATES.

APPENDIX.

PART I.

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE AUDITOR,
Washington, March 24, 1904.

Memorandum.—Senate resolution, dated March 11, 1904, relative to advance in freight rates and the resulting increase in revenue of the railway corporations of the United States.

The freight traffic of the railways of the United States is carried under two general classes of schedules known as "class tariffs" and "commodity tariffs." The latter name specific rates on certain commodities, such as grain, lumber, coal, live stock, dressed meats, fertilizers, etc. In the absence of commodity rates the regular class tariffs apply. In these tariffs the rates are arranged in classes and are used in connection with a freight classification, which indicates the class to which any given article belongs. Where an article is changed from one class to another the effect therefore is to change the rate of transportation upon that article.

For many years there have been three general freight classifications in use throughout the United States, namely, the official classification, which governs the class rates generally in the territory north of the Ohio and Potomac rivers and east of the Mississippi River and Lake Michigan; the Southern classification, which governs generally in the territory south of the Ohio and Potomac rivers and east of the Mississippi River, and the Western classification, which governs generally in the territory west of the Mississippi River and also applies on traffic between Chicago, Peoria, and certain other points east of the river and points west thereof.

On January 1, 1900, official classification No. 20 became effective. This classification made many advances in ratings over the previous classification (No. 19), which was in force prior to the date mentioned. The total number of ratings advanced was 818, but it was found that there were many duplications, the same article being classified more than once in different parts of the classification, and that such duplications amounted to about 30 per cent of the total number. The actual number of advances was 572, as follows:

Ratings.	Advanced—	
	From class—	To class—
289	4	3
155	3	2
71	6	5
25	2	1
15	5	4
8	1	1½
5	1	D-1
2	1½	D-1
1	D-1	2½
1	4	2
572		

In the same classification (No. 20) there were six reductions in rating.

On March 10, 1900, most of the articles which had been advanced on January 1 from fourth to third class were reduced to 20 per cent less than third class, and most articles which on same date had been advanced from third to second class were reduced to 15 per cent less than second class, and these ratings still remain in force.

Prior to February 1, 1900, Southern classification No. 25 had been for some time in force. There were three issues of this classification during the year 1900, namely, No. 26, effective February 1; No. 27, effective June 1; and No. 28, effective November 10. By comparing the last with No. 25 it was found that 636 changes were made during the year, of which 531 were advances and 105 reductions in rating.

Western classification No. 30, which became effective January 25, 1900, superseding No. 29, which took effect July 1, 1899, made 257 changes in rating, of which 240 were advances and 17 were reductions.

These classification changes were quite fully set forth in the annual report of the Commission for the year 1900. A number of issues of each of the classifications referred to have been made since the year 1900, but the changes made in such issues were comparatively few and were not of such importance as to deserve special notice.

As before indicated, all traffic which is carried at class rates throughout the United States is carried under one or more of the three general classifications above described. All of the thousands of railroad points throughout the country are therefore more or less affected by these classification changes, but in order to form an estimate which would be of any value as to the amount of increase in the revenues of the railways as a result of such advances in classification, it would be necessary to be in possession of some knowledge, not only as to the separate tonnage carried of each of the articles affected, but as to the points between which they were carried as well. This information is not available, and even if it could be obtained the undertaking would be so enormous as to render it virtually impracticable.

The annual reports filed with the Commission by the common carriers under section 20 of the act to regulate commerce show the total tonnage of all freight carried and the total freight revenue derived therefrom; but with the exception of a few important commodities, such as coal, ores, forest products, etc., the separate tonnage of the articles transported is not shown, and in the cases of the exceptions referred to the points between which such articles are carried are not stated. The following table shows the total tonnage and freight revenue of all the railways in the United States for the years ending June 30, 1899, 1900, 1901, 1902, and 1903, with the average rate per ton for each year, except that the figures given for the year last named represent about 98 per cent of the total operated mileage:

Year ending June 30—	Total number of tons of freight carried.	Total freight revenue.	Average rate per ton.
1899	959,763,583	$913,737,155	$0.[illegible]
1900	1,101,080,238	1,049,256,328	.[illegible]
1901	1,089,226,440	1,118,543,014	1.[illegible]
1902	1,200,315,787	1,207,228,845	1.[illegible]
1903	1,221,475,948	1,318,320,604	1.[illegible]

Attached hereto is a statement showing the actual tonnage and freight revenue for the years named, and also what the total freight revenue would have been for each of the fiscal years subsequent to that ending June 30, 1899, at the average rate per ton which prevailed that year, also the increase in revenue for such subsequent years resulting from the higher average rate per ton. It is believed that such a statement gives a more accurate idea of the increased revenue resulting from an advance in freight rates and classifications than can be obtained in any other way. The figures given include the tonnage and also the revenue derived from both class and commodity rates, there being no way of showing these items separately.

It should be borne in mind, in connection with this statement, that the average rate per ton and the average rate per ton per mile, being determined from the tonnage carried and the revenue derived therefrom, and not from the tariffs, would vary somewhat for different years without any change being made in the tariff rates, such variation being due to the difference in the relative quantity of the various classes of freight carried. For instance, should there be a marked increase in the percentage of tonnage of low-grade freight for any given year over the preceding year, the average rate per ton and the average rate per ton per mile would show a decrease for the latter as compared with the previous year, based on the same tariff rates. It may be said that there is a constant tendency toward an increase in the percentage of the tonnage of low-grade freight, so that if there had been no advances in rates or classification since the year ending June 30, 1899, it is safe to say that the average rate per ton for each of the subsequent years would have been somewhat less than for that year.

The increase in the average rate per ton, for the year ending June 30, 1900, over the previous year was quite small, being only four one-hundredths of a cent per ton, and by reference to the statement it will be seen that the increase in revenue for that year over the preceding year was only $456,736. For the year ending June 30, 1901, the increase in the average rate per ton over the year ending June 30, 1899, was 7.49 cents, the difference in revenue being $81,599,443. The average rate per ton for the year ending June 30, 1902, was $1.0058, being 5.38 cents greater than the average rate for the first-mentioned year, but a little over 2 cents per ton less than for the preceding year. The difference in revenue for this year over what would have been produced by the average rate of the first year in question was $64,528,216. The falling off in the average rate per ton appears to have been due to a large increase in low-grade tonnage in 1902 over the preceding year. For instance, in the items of coal, coke, and ores alone, there was an increase in tonnage for this year over the preceding year of nearly 30,000,000 tons.

For the year ending June 30, 1903, it will be seen there was a large increase in both tonnage and revenue over any of the previous years mentioned, the increase in revenue, however, being relatively much greater than the increase in tonnage. The average rate per ton for this year was $1.0793, or nearly 12¾ cents per ton greater than the average rate per ton for the year ending June 30, 1899, this difference amounting in revenue to $155,475,502 over what it would have been at the average rate of the first-mentioned year.

In the reports of the Commission on the Statistics of Railways in the United States, compiled from the annual reports of the carriers filed under section 20 of the act to regulate commerce, the railways of the country are divided into ten territorial groups, the tonnage, revenue, etc., for each group being separately shown. As heretofore indicated, the annual reports of the carriers show the tonnage of a few important commodities separately, and while the separate revenue derived therefrom and the points between which the articles are carried are not given, where advances in rates have been made on any of these commodities it is possible to form an estimate of the increase in revenue resulting from such advances which, no doubt, while considerably at variance with the actual figures, were they obtainable, will give a fair idea as to the increase in revenue resulting from an advance in rates on such articles.

In the territory governed by the official classification, heretofore described, both hay and sugar in carloads were advanced January 1, 1900, from sixth to fifth class. Between New York and Chicago this advance amounts to 5 cents per 100 pounds, or $1 per ton. Between New York and the territory lying between that point and Chicago the advance would be less, in some cases as low as 40 cents per ton, while in the territory west of Chicago and east of the Mississippi River the advance would be in some instances as high as $1.50 per ton. An average advance of 80 cents per ton on these two commodities in official classification territory, it is believed, is a fair estimate.

The total tonnage of hay reported by originating roads for the years ending June 30, 1900, 1901, and 1902, was as follows:

	Tons.
1900	4,112,092
1901	4,086,700
1902	4,681,509

The figures giving the separate tonnage of this commodity for the year ending June 30, 1903, are not yet available.

It is calculated from the statistical reports of the Commission that of the total tonnage carried by the railroads of the United States about 65 per cent is carried in the territory governed by the official classification. Taking the total tonnage of hay for the last year mentioned (1902), namely, 4,681,509 tons, 65 per cent thereof would be 3,042,980 tons. Based on an average advance of 80 cents per ton in rate, the increase in revenue for that year would be $2,434,384, and from January 1, 1900, to the present time, during which the advanced rates have been in force, nearly $10,000,000. There was no advance in the classification of hay in the southern and western classifications.

The total tonnage of sugar originating on reporting roads for the same years was as follows:

	Tons.
1900	2,050,558
1901	2,301,932
1902	2,254,571

The classification of sugar, as before stated, was advanced in the official classification territory at the same time as hay (January 1, 1900), and to the same extent, namely, from sixth to fifth class, the increase between New York and Chicago being 5 cents per 100 pounds, or $1 per ton. Taking 65 per cent as the proportion of the total tonnage carried in the official classification territory, we have

for the year ending June 30, 1902, 1,465,471 tons. On basis of an average advance of 80 cents per ton, the increase in revenue for that year would be $1,172,376, and from January 1, 1900, to the present time, during which the advanced rates have been in force, something over $4,500,000.

In the western classification no advance was made in the classification of sugar, while in the southern it was advanced from sixth to fifth class. In the latter territory, however, sugar shipped from the regular shipping points, such as New Orlenas, La., and Mobile, Ala., is almost invariably carried at commodity rates. It does not appear that any general advance has been made in these rates, and recently material reductions have been made.

On January 1, 1900, when the carload rating of hay and sugar was advanced, the carload rating on about 70 other articles was also advanced from the sixth to the fifth class in the official classification, but there is no way of arriving at even an estimate of the tonnage of these articles, and no estimate can, therefore, be made as to the increased revenue resulting from the advance in the classification of such articles.

At the beginning of the year 1903 the rates on all iron and steel articles were advanced 10 per cent in the territory governed by the official classification. The annual reports of the carriers do not appear to include all iron and steel articles in the table which gives the separate tonnage for particular commodities. According to the reports for the year ending June 30, 1902, the total tonnage of iron and steel articles originating on reporting roads was as follows:

	Tons.
Iron, pig and bloom	14,714,989
Iron and steel rails	4,849,255
Other castings and machinery	9,696,433
Bar and sheet metal	10,624,712

Machinery is not included in the list of iron and steel articles and does not take the same rates. The third item, as given above, must therefore be eliminated. The total of the other three items is 30,188,956 tons. Taking 65 per cent of this as the tonnage carried in official classification territory we have 19,622,821 tons. The advance ranged from about one-half to 1½ cents per hundred pounds. The average was probably about 1 cent per hundred pounds, or 20 cents per ton. Assuming the tonnage of these articles for the year 1903 to be not less than for 1902, the increased revenue thereon for that year owing to the advance in rates would be about $4,000,000.

The total tonnage of bituminous coal for the year ending June 30, 1902, was 154,402,501 tons. There appear to have been few important changes in the rates on this commodity in southern and western territory since January 1, 1900. In the territory north of the Ohio and Potomac rivers and east of the Mississippi River advances were made in the early part of 1903 which probably averaged 10 cents per ton. Again, taking 65 per cent of the entire tonnage as the amount carried in this territory we have 100,361,625 tons. Based on the tonnage of this commodity for 1902, the increase in revenue for 1903, at an average advance of 10 cents per ton, would be a little over $10,000,000. There appear to have been no material advances in the rates on anthracite coal during the period in question.

In June, 1903, the rates on lumber and other forest products from all lumber-producing points in the southern territory east of the Mississippi River to Ohio River points, and points north thereof; also from points in Arkansas, Louisiana, and Texas to the same territory were advanced 2 cents per 100 pounds. For the year ending June 30, 1902 (figures for 1903 not yet available), the total tonnage of lumber and other forest products was 67,703,050 tons, of which it is estimated that about 20,000,000 tons originated in the territory above described. Assuming that there has been no falling off in tonnage, the increase in revenue for the nine months the advanced rates have been in force, at an advance of 2 cents per 100 pounds, or 40 cents per ton, would be about $6,000,000.

Grain and grain products constitute an important part of the freight traffic of the country, the tonnage for the year ending June 30, 1902, being 36,813,857 tons. The fluctuation in the rates on these commodities during the last four years, however, has been such as to render an estimate of the effect of such changes on railway revenue impracticable. The rates on this traffic for a large portion of the country are based on the rates from Chicago to New York. The following table shows the changes in the rates on wheat and flour, carloads, from and to the points named, since January 1, 1900, to the present time:

	Cents per 100 pounds.
January 1, 1900	22
March 5, 1900	15
November 1, 1900	17½
June 1, 1901	15
October 21, 1901	17½
December 8, 1902	20
May 11, 1903	18
December 1, 1903, to present date	20

As will be seen, the rate in force January 1, 1900 (which became effective November 1, 1899), was higher than at any subsequent date, while for a considerable portion of the time the rates on this traffic were on basis of 15 cents per 100 pounds Chicago to New York.

Respectfully submitted.

J. M. SMITH, *Auditor.*

Statement showing the total number of tons of freight carried by the railroads of the United States for the fiscal years ending June 30, 1899, 1900, 1901, 1902, and 1903, with the total revenue accruing therefrom; also the revenue which would have accrued at the average rate of 95.2 cents per ton for the years ending June 30, 1900, 1901, 1902, and 1903, this being the average rate for the year ending June 30, 1899; and the increase in the revenue for the years 1900, 1901, 1902, and 1903, resulting from the increase in the average rate per ton for those years.

Year ending June 30—	Number of tons of freight carried.	Total freight revenue as charged.	Amount of freight revenue at average rate per ton of 95.2 cents, being the average rate for the year ending June 30, 1899.	Increase.
1899	959,763,583	$913,787,155	$913,787,155	
1900	1,101,680,288	1,049,256,398	1,048,799,567	$456,738
1901	1,089,226,440	1,118,543,014	1,086,943,571	31,599,443
1902	1,200,315,787	1,207,228,845	1,142,700,629	64,528,216
1903 a	1,221,475,948	1,318,320,604	1,162,845,108	155,475,496

a The figures given for the year 1903 represent about 93 per cent of the total mileage.

PART II.

Summary showing gross earnings, operating expenses, ratio of operating expenses to earnings, mileage operated, etc., of the railways in the United States for the five years ending June 30, 1899, 1900, 1901, and 1902.

Item.	1899.			1900.			Increase, 1900 over 1899.	
	Amount.	Proportion to total operating expenses.	Per mile of line operated.	Amount.	Proportion to total operating expenses.	Per mile of line operated.	Amount.	Per cent.
		Per ct			*Per ct*			
Gross earning from operation	$1,313,610,118	.....	$7,005	$1,487,044,814	.....	$7,722	$173,434,696	13.20
Operating expenses:								
Maintenance of way and structures	180,410,806	21.05	962	211,220,521	21.97	1,097	30,809,715	17.08
Maintenance of equipment	150,919,249	17.62	805	181,173,880	18.84	941	30,254,631	20.05
Conducting transportation	486,159,607	56.73	2,593	529,116,326	55.04	2,748	42,956,719	8.84
General expenses	38,676,883	4.51	206	39,328,765	4.09	204	651,882	1.69
Unclassified	802,454	.09	4	589,019	.06	3	a 213,435	a 26.60
Total operating expenses	856,968,999	100.00	4,570	961,428,511	100.00	4,993	104,459,512	12.19
Percentage of operating expenses to earnings	65.24	.....	.....	64.65	.....	.....	.....	.....
Mileage operated (single track) ..... miles	187,534.68	.....	.....	192,556.03	.....	.....	.....	.....

Item.	1901.			Increase, 1901 over 1900.	
	Amount.	Proportion to total operating expenses.	Per mile of line operated.	Amount.	Per cent.
		Per ct			
Gross earnings from operation	$1,588,526,037	.....	$8,123	$101,481,223	6.82
Operating expenses:					
Maintenance of way and structures	231,056,602	22.42	1,182	19,836,081	9.39
Maintenance of equipment	190,299,560	18.46	973	9,125,680	5.04
Conducting transportation	565,265,789	54.87	2,890	36,149,463	6.83
General expenses	42,566,553	4.13	218	3,237,788	8.23
Unclassified	1,208,766	.12	6	619,747	105.22
Total operating expenses	1,030,397,270	100.00	5,269	68,968,759	7.17
Percentage of operating expenses to earnings	64.86	.....	.....	.....	.....
Mileage operated (single track) ..... miles	195,561.92	.....	.....	.....	.....

a Decrease.

Summary showing gross earnings, etc.—Continued.

Item.	1902.			Increase, 1902 over 1901.	
	Amount.	Proportion to total operating expenses.	Per mile of line operated.	Amount.	Per cent.
		Per ct			
Gross earnings from operation	$1,726,380,267	.....	$8,625	$137,854,230	8.68
Operating expenses:					
Maintenance of way and structures	248,381,594	22.25	1,241	17,324,992	7.50
Maintenance of equipment	213,380,644	19.12	1,066	23,081,084	12.13
Conducting transportation	609,961,695	54.64	3,047	44,695,906	7.91
General expenses	44,197,880	3.96	221	1,631,327	3.83
Unclassified	326,934	.03	2	a 881,832	a 72.95
Total operating expenses	1,116,248,747	100.00	5,577	85,851,477	8.33
Percentage of operating expenses to earnings	64.66	.....	.....	.....	.....
Mileage operated (single track) ..... miles	200,154.56	.....	.....	.....	.....

a Decrease.

[List referred to by Mr. Bacon on page 1778.]

List of commercial, mercantile, manufacturing, and agricultural organizations associated in the movement to secure legislation giving greater effectiveness to the interstate-commerce act, by conferring authority upon the Interstate Commerce Commission, upon full hearing of any formal complaint, to prescribe reasonable and equitable rates to be substituted by the carrier in place of those found to be unreasonable or discriminative; the order of the Commission in such case to become operative upon due notice to the carrier and so continue until set aside by the court of last resort, unless upon review in the circuit court of the United States it is found that such order clearly proceeds upon some error of law.

NATIONAL AND SECTIONAL ORGANIZATIONS.

American Shippers' Association.
American Short-Horn Breeders' Association.
Carriage Builders' National Association.
Cattle Growers' Interstate Executive Committee.
Central Yellow Pine Association. (Comprising the southern States of the Mississippi Valley.)
Coal Shippers' Association.
Colorado and Wyoming Lumber Dealers' Association.
Eastern Washington and Northern Idaho Lumber Manufacturers' Association.
Georgia Interstate Saw Mill Association. (Comprising Georgia, Florida, etc.)
Grain Dealers' Union of Southwest Iowa and Northwest Missouri.
Grain Dealers' National Association.
Hardwood Manufacturers' Association of the United States.
Iowa-Nebraska Wholesale Grocers' Association.
Millers' National Association.
Millers' National Federation.
Millinery Jobbers' Association.
Mississippi and Louisiana Lumber Dealers' Association.
Mississippi Valley Lumbermen's Association.
National Association of Manufacturers.

National Wholesale Druggists' Association.
National Farmers' Exchange.
National Grange, Patrons of Husbandry.
National Hardware Association.
National Retail Hardware Dealers' Association.
National Hay Association.
National League of Commission Merchants.
National Live Stock Association.
National Live Stock Exchange.
National Lumber Manufacturers' Association.
National Wholesale Lumber Dealers' Association.
National Paint, Oil, and Varnish Association.
National Wool Growers' Association.
National Retail Grocers' Association.
New England Grain Dealers' Association.
New England Granite Manufacturers' Association.
New England Shoe and Leather Association.
North Carolina Pine Association. (Comprising North and South Carolina and Virginia.)
Northwestern Manufacturers' Association.
Northwestern Lumbermen's Association. (Comprising Minnesota, Iowa, North Dakota, and South Dakota.)
Pacific Coast Hardware and Metal Association.
Pacific Coast Lumber Manufacturers' Association.
Paint Grinders' Association of the United States.
Red River Millers' Club.
South Dakota, Southwest Minnesota and Northwest Iowa Retail Implement Dealers' Association.
South Dakota and Southwest Minnesota Millers' Club.
Southeastern Cotton Buyers' Association. (Comprising Alabama, Georgia, North and South Carolina.)
Southeastern Millers' Association.
Southern Hardware Jobbers' Association.
Southern Interstate Cotton Convention.
Southern Lumber Manufacturers' Association.
Southern Supply and Machinery Dealers' Association.
Southwestern Kansas and Oklahoma Implement and Hardware Dealers' Association.
Southwestern Lumbermen's Association. (Comprising Kansas, Missouri, and Oklahoma.)
Southwestern Mercantile Association.
Trans-Mississippi Commercial Congress.
Travelers' Protective Association of America.
Western Association of Pine Shippers. (Comprising Washington, Oregon, Idaho, and Montana.)
Western Fruit Jobbers' Association.
Western Retail Implement and Vehicle Dealers' Association. (Comprising Kansas, Missouri, Colorado, Oklahoma, and Indian Territory.)
Western Retail Lumbermen's Association.
Western Association of Shoe Wholesalers.
Winter Wheat Millers' League.
Wholesale Saddlery Association of the United States.

State and Local Organizations.

ALABAMA.

Birmingham Board of Trade.
Birmingham Commercial Club.
Huntsville Chamber of Commerce.
Huntsville Wholesale Grocers' Association.
Mobile Commercial Club.

ARKANSAS.

Arkansas Retail Grocers and Merchants' Association.
Arkansas State Board of Trade.
Fort Smith Traffic Bureau.

Gentry Fruit Growers' Association.
Judsonia Fruit and Vegetable Growers' Association.
Little Rock Board of Trade.
Little Rock Merchants' Freight Bureau.
Texarkana Commercial Club.
Texarkana Freight Bureau.
Texarkana Wholesale Grocers' Association.

CALIFORNIA.

Associated Wholesale Grocers of California.
California State Grange, Patrons of Husbandry.
Southern California Fruit Exchange.
Southern California Retail Hardware and Implement Association.
Claremont Citrus Union.
Highland Orange Growers' Association.
Humboldt County Chamber of Commerce, Eureka.
Indian Hill Citrus Union, North Pomona.
Associated Jobbers of Los Angeles.
Los Angeles Board of Trade.
Los Angeles Chamber of Commerce.
Los Angeles, Cahuenga Valley Lemon Exchange.
Los Angeles Merchants and Manufacturers' Association.
Oakland Board of Trade.
Oakland Merchants' Exchange.
Pomona Board of Trade.
Pomona Fruit Growers' Exchange.
Porterville Board of Trade.
Riverside Fruit Exchange.
San Antonio Fruit Exchange, Pomona.
San Bernardino Board of Trade.
San Bernardino County Fruit Exchange, Colton.
San Bernardino Merchants' Association.
San Diego Chamber of Commerce.
San Francisco Chamber of Commerce.
San Francisco Merchants' Credit Association.
Santa Barbara County Chamber of Commerce, Santa Barbara.
Santa Barbará Lemon Growers' Exchange.
Tulare County Citrus Fruit Exchange, Porterville.
Whittier Citrus Union.

COLORADO.

Colorado and Wyoming Lumber Dealers' Association.
Colorado State Realty Association.
Colorado City Chamber of Commerce.
Colorado Springs Chamber of Commerce.
Denver Chamber of Commerce and Commercial Club.
Denver Manufacturers and Jobbers' Transportation Association.
Denver Real Estate Exchange.
Fort Collins Sheep Feeders' Association.
Grand Junction Chamber of Commerce.
Grand Junction Liberty League.
Gunnison County Stock Growers' Association, Gunnison.
Leadville Board of Trade.
Lincoln County Cattle Growers' Association, Hugo.
Lincoln and Elbert Counties Wool Growers' Association, Hugo.
Roaring Fork and Eagle River Stock Growers' Association, Carbondale.

CONNECTICUT.

Connecticut State Grange, Patrons of Husbandry.
Bridgeport Business Men's Association.
New Haven Chamber of Commerce.
Waterbury Business Men's Association.

DISTRICT OF COLUMBIA.

Washington Board of Trade.

FLORIDA.

Georgia Interstate Saw Mill Association. (Comprising Georgia and Florida.)

GEORGIA.

Georgia Interstate Saw Mill Association. (Comprising Georgia and Florida.)
North Georgia Fruit Growers' Association.
Atlanta Chamber of Commerce.
Atlanta Freight Bureau.
Savannah Chamber of Commerce.
Savannah Cotton Exchange.

IDAHO.

Eastern Washington and Northern Idaho Lumber Manufacturers' Association.
Idaho Lumber Dealers' Association.
Idaho Sheep and Wool Growers' Association.
Palouse Implement Dealers' Association, Moscow.

ILLINOIS.

Illionis Grain Dealers' Association.
Illinois Live Stock Breeders' Association.
Illinois Lumber Dealers' Association.
Illinois Manufacturers' Association.
Illinois Millers' State Association.
Illionis State Grange, Patrons of Husbandry.
Southern Illinois Millers' Association.
Travelers' Protective Association of Illinois.
Anna Fruit Growers' Association.
Belleville Commercial Club.
Bloomington Business Men's Association.
Cairo Board of Trade.
Chicago Board of Trade.
Chicago Branch, National League of Commission Merchants.
Chicago Builders and Traders' Exchange.
Chicago Commercial Exchange.
Chicago Live Stock Exchange.
Chicago Merchants' Association.
Chicago Shippers' Association.
Joliet Business Men's Association.
La Salle Retail Merchants' Association.
Moline Business Men's Association.
Quincy Chamber of Commerce.
Quincy Freight Bureau.
Quincy Jobbers' Association.
Quincy Retail Merchants' Association.
Rockford Business Men's Club.
Rockford Grocers' Association.
Rockford Shippers and Manufacturers' Association.
Springfield Business Men's Association.

INDIANA.

Indiana Grain Dealers' Association.
Indiana Hardwood Lumbermen's Association.
Indiana Improved Stock Breeders' Association.
Indiana Millers' Association.
Indiana Retail Merchants' Association.
Indiana Shippers' Association.
Indiana State Board of Commerce.
Indiana State Grange, Patrons of Husbandry.
Shippers' Protective League of Indiana.
Travelers' Protective Association of Indiana.
Evansville Business Association.
Fort Wayne Commercial Club.

Fort Wayne Retail Merchants' Association.
Indianapolis Branch, National League of Commission Merchants.
Indianapolis Board of Trade.
Indianapolis Commercial Club.
Indianapolis Fruit and Produce Commission Merchants' Exchange.
Indianapolis Furniture Manufacturers.
Lafayette Commercial Club.
Lafayette Merchants' Association.

IOWA.

Iowa Millers' State Association.
Commercial Association of Iowa.
Corn Belt Meat Producers' Association of Iowa.
Grain Dealers' Union of Southwestern Iowa and Northwestern Missouri.
Iowa Grain Dealers' Association.
Iowa-Nebraska Wholesale Grocers' Association.
Iowa State Grange, Patrons of Husbandry.
Iowa State Manufacturers' Association.
South Dakota, Southwestern Minnesota, and Northwestern Iowa Retail Implement Dealers' Association.
Burlington Business Men's Club.
Burlington Commercial Exchange.
Cedar Rapids Commercial Club.
Chariton, Noxall Club. (The Business Men's Association.)
Davenport Business Men's Association.
Des Moines Commercial Exchange.
Dubuque Shippers' Association.
Iowa City Commercial Club.
Oskaloosa Commercial Club.

KANSAS.

Federation of Commercial Interests of Kansas.
Kansas Grain Dealers' Association.
Kansas Improved Stock Breeders' Association.
Kansas Millers' Association.
Kansas State Grange, Patrons of Husbandry.
Kansas Wholesale Grocers' Association.
Southern Kansas Millers' Commercial Club.
Southwestern Kansas and Oklahoma Implement and Hardware Dealers' Association.
Arkansas City Commercial Club.
Emporia Business Men's Association.
Howard Commercial Club.
Hutchinson Commercial Club.
Lindsborg Commercial Club.
Russell Commercial Club.
Salina Commercial Club.
Topeka Commercial Club.
Wellington Business Men's Club.
Wichita Board of Trade.
Wichita Chamber of Commerce.
Wichita Commercial Club.
Wichita Traffic Bureau.

KENTUCKY.

Travelers' Protective Association of Kentucky.
Covington Business Men's Club.
Hartford Commercial Club.
Louisville Branch, National League of Commission Merchants.
Louisville Lumbermen's Club.

LOUISIANA.

Mississippi and Louisiana Lumber Dealers' Association.
New Orleans Branch, National League of Commission Merchants.

New Orleans Board of Trade.
New Orleans Live Stock Exchange.
Ponchatoula Farmers' Association.

MARYLAND.

Baltimore Branch, National League of Commission Merchants.
Baltimore Chamber of Commerce.
Baltimore Lumber Exchange.
Baltimore Travelers and Merchants' Association.
Baltimore Tobacco Board of Trade.

MASSACHUSETTS.

Massachusetts Retail Lumber Association.
Massachusetts State Board of Trade.
Massachusetts State Grange, Patrons of Husbandry.
Massachusetts Wholesale Lumber Association.
Boston Associated Board of Trade. (Representing 23 affiliated organizations.)
Boston Branch, National League of Commission Merchants.
Boston Fruit and Produce Exchange.
Boston Lumber Trade Club.
Brockton Board of Trade.
Cambridge Citizens' Trade Association.
Fitchburg Merchants' Association.
Haverhill Board of Trade.
Lowell Board of Trade.
Lowell Builders' Exchange.
Mansfield Board of Trade.
Norwood Business Association and Board of Trade.
Somerville Board of Trade.
Worcester Board of Trade.

MICHIGAN.

Michigan Dairymen's Association.
Michigan Grain Dealers' Association.
Michigan Hay Association.
Michigan Merino Sheep Breeders' Association.
Michigan Retail Lumber Dealers' Association.
Michigan State Grange, Patrons of Husbandry.
Michigan State Millers' Association.
Southern Michigan Fruit Association.
Albion Farmers' Club.
Detroit Board of Commerce.
Detroit Branch, National League of Commission Merchants.
Grand Rapids Board of Trade.
Grand Rapids Fruit Growers' Association.
Saginaw Lumber Dealers' Association.

MINNESOTA.

Minnesota Millers' Club.
Minnesota Municipal and Commercial League. (Representing over 50 communities.
Minnesota Retail Grocers and General Merchants' Association.
Minnesota Retail Hardware Association.
Minnesota Shippers and Receivers' Association.
South Dakota and Southwest Minnesota Millers' Club.
South Dakota, Southwest Minnesota, and Northwest Iowa Retail Implement Dealers' Association.
Red River Millers' Club, Moorhead. (See North Dakota.)
Duluth Board of Trade.
Duluth Branch, Lake Superior Retail Meat Dealers' Association.
Duluth Commercial Club.
Duluth Produce and Fruit Exchange.
Duluth Retail Grocers' Association.
Kenyon Commercial Club.

Mankato Board of Trade.
Minneapolis Branch, National League of Commission Merchants.
Minneapolis Chamber of Commerce.
Minneapolis Millers' Club.
Rochester Union, American Society of Equity.
St. Paul Board of Trade.
St. Paul Chamber of Commerce.
St. Paul Commercial Club.
St. Paul Produce Exchange.
South St. Paul Live Stock Exchange.
Winona Board of Trade.

MISSISSIPPI.

Aberdeen Group Commercial Association, West Point.
Mississippi and Louisiana Lumber Dealers' Association.
Laurel Board of Trade.
Natchez Cotton and Merchants' Exchange.
Vicksburg Cotton Exchange.

MISSOURI.

Grain Dealers' Union of Southwest Iowa and Northwest Missouri.
Missouri Retail Hardware Association.
Missouri Retail Merchants' Association.
Travelers' Protective Association of Missouri.
Gashland Fruit Growers' Association.
Jefferson City Commercial Club.
Kansas City Board of Trade.
Kansas City Hay Dealers' Association.
Kansas City Livestock Exchange.
Kansas City Manufacturers and Merchants' Association.
Kansas City Millers' Club.
Peirce City Fruit Growers' Association.
St. Joseph Commercial Club.
St. Louis Builders' Exchange.
St. Louis Business Men's League.
St. Louis Cotton Exchange.
St. Louis Fruit and Produce Exchange.
St. Louis Lumber Dealers' Association.
St. Louis Manufacturers' Association.
St. Louis Merchants' Exchange.
St. Louis Millers' Club.
St. Louis Stove Manufacturers' Association.

MONTANA.

Eastern Montana Wool Growers' Association.
Montana Stock Growers' Association.
North Montana Wool Growers' Association.
Great Falls Retail Merchants' Exchange.

NEBRASKA.

Iowa-Nebraska Wholesale Grocers' Association.
Millers' Club of Nebraska.
Nebraska Lumber Dealers' Association.
Nebraska Retail Merchants' Association.
Nebraska Stock Growers' Association.
South Nebraska Miller's Club.
Fremont Commercial Club.
Lincoln Commercial Club.
Lincoln Retail Grocers' Association.
Omaha Branch, National League of Commission Merchants.

Omaha Grain Exchange.
Omaha Produce Exchange.
South Omaha Live Stock Exchange.

NEW HAMPSHIRE.

New Hampshire Lumbermen's Association.
New Hampshire State Grange, Patrons of Husbandry.

NEW JERSEY.

New Jersey Lumbermen's Protective Association.
New Jersey State Grange, Patrons of Husbandry.
Jersey City Board of Trade.
Newark Board of Trade.

NEW MEXICO

Las Vegas Commercial Club.

NEW YORK.

New York Manufacturers' Association.
New York State Fruit Growers' Association.
New York State Grange, Patrons of Husbandry.
New York State Millers' Association.
New York State Retail Lumber Dealers' Association.
Albany Chamber of Commerce.
Auburn Business Men's Association.
Brooklyn, United Retail Grocers' Association.
Buffalo, Black Rock Manufacturers' Association.
Buffalo Branch, National League of Commission Merchants.
Buffalo Chamber of Commerce.
Buffalo Lumber Exchange.
Jamestown Manufacturers' Association.
Lockport Board of Trade.
Middletown Business Men's Association.
New York Cotton Exchange.
New York Fruit and Produce Trade Association.
New York Lumber Trade Association.
New York North Side Board of Trade.
New York Stationers' Board of Trade.
Rochester Chamber of Commerce.
Syracuse Chamber of Commerce.
Utica Chamber of Commerce.
Watertown Chamber of Commerce.

NORTH CAROLINA.

North Carolina Pine Association. (Comprising North and South Carolina and Virginia.)
Charlotte Shippers' Association.
East Carolina Truck and Fruit Growers' Association, Wilmington.
Wilmington Chamber of Commerce.
Wilmington Merchants' Association.

NORTH DAKOTA.

Red River Millers' Club. (Comprising North Dakota and northwest Minnesota.)

OHIO.

Miami Valley and Western Ohio Grain Dealers' Association.
Middle Ohio Grain Dealers' Association.

Northwest Ohio Grain Dealers' Association.
Northwest Ohio Millers and Grain Dealers' Association.
Northwest Ohio Swine Breeders' Association.
Ohio Grain Dealers' Association.
Ohio Millers' State Association.
Ohio Shippers' Association.
Ohio State Association, Patrons of Industry.
Ohio State Grange, Patrons of Husbandry.
Ohio State Hardware Association.
Western Ohio Grain Dealers' Association.
Cincinnati Branch, National League of Commission Merchants.
Cincinnati Business Men's Club.
Cincinnati Carriage Makers' Club.
Cincinnati Chamber of Commerce.
Cincinnati Commercial Travellers' Club.
Cincinnati Lumbermen's Club.
Cincinnati Manufacturers' Club.
Cincinnati Receivers and Shippers' Association.
Cleveland Chamber of Commerce.
Cleveland Retail Coal Dealers' Association.
Cleveland Wholesale Fruit and Produce Association.
Cleveland Wholesale Lumbermen's Association.
Columbus Board of Trade.
Columbus Shippers' Association.
Columbus South Side Business Men's Association.
Dayton Commercial Club.
Dayton Receivers and Shippers' Association.
Massillon Board of Trade.
Newark Board of Trade.
Portsmouth Board of Trade.
Sandusky Chamber of Commerce.
Toledo Branch, National League of Commission Merchants.
Toledo Builders' Exchange.
Toledo Produce Exchange.
Toledo Wholesale Lumber Dealers' Association.
Toronto Retail Grocers' Association.
Youngstown Builders' Exchange.
Steubenville Retail Grocers' Association.
Steubenville Retail Merchants' Board of Trade.

OKLAHOMA.

Southwest Kansas and Oklahoma Implement and Hardware Dealers' A ciation.
Oklahoma Chamber of Commerce, Oklahoma City.
Oklahoma Live Stock Association.
Oklahoma Millers' Association.
Oklahoma Traffic Association.

OREGON.

Oregon Live Stock Breeders' Association.
Portland Board of Trade.
Portland Chamber of Commerce.
Portland, Manufacturers' Association of the Northwest.

PENNSYLVANIA.

Pennsylvania Lumbermen's Association.
Pennsylvania Millers' State Association.
Pennsylvania State Grange. Patrons of Husbandry.
Philadelphia Bourse.
Philadelphia Commercial Exchange.
Philadelphia Commercial Museums.
Philadelphia Hardware Merchants and Manufacturers' Association.
Philadelphia Lumbermen's Exchange.

Philadelphia Manufacturers' Club.
Philadelphia Produce Exchange.
Philadelphia Trades League.
Pittsburg Branch, National League of Commission Merchants.
Pittsburg Chamber of Commerce.
Pittsburg Grain and Flour Exchange.
Pittsburg Wholesale Lumber Dealers' Association.
Reading Board of Trade.
Scranton Board of Trade.
Shamokin Retail Merchants' Protective Association.

RHODE ISLAND.

Lumber Dealers' Association of Rhode Island.
Rhode Island State Grange, Patrons of Husbandry.
Pawtucket Merchants' Association.
Pawtucket, South Woodlawn Improvement Society.

SOUTH CAROLINA.

North Carolina Pine Association. (Comprising North and South Carolina and Virginia.)
Piedmont Wholesale Grocers' Association, Anderson.
Anderson Chamber of Commerce.
Charleston Bureau of Freight and Transportation.
Charleston Chamber of Commerce.
Charleston Commercial Club.
Charleston Cotton Exchange.
Columbia Chamber of Commerce.
Gaffney Business Men's Club.
Georgetown Board of Trade.
Spartanburg Chamber of Commerce.

SOUTH DAKOTA.

South Dakota and Southwest Minnesota Millers' Club.
South Dakota, Southwest Minnesota, and Northwest Iowa Retail Implement Dealers' Association.
Western South Dakota Stock Growers' Association.
Deadwood Business Club.
Lead Commercial Club.

TENNESSEE.

Chattanooga Retail Grocers' Association.
Memphis Builders' Exchange.
White County Live Stock Association, Sparta.

TEXAS.

Texas Cattle Raisers' Association.
Texas Cotton Growers' Association.
Texas Grain Dealers' Association.
Texas Live Stock Association.
Texas Lumbermen's Association.
Texas Millers' Association.
Travelers' Protective Association of Texas.
Dallas Commercial Club.
Dallas Freight Bureau.

UTAH.

Utah Live Stock Association.
Utah Wool Growers' Association.
Ogden, Weber Club (The Business Men's Association).

VERMONT.

Vermont Jersey Cattle Club.
Vermont State Dairymen's Association.
Vermont State Grange, Patrons of Husbandry.
Vermont Sugar Makers' Association.

VIRGINIA.

North Carolina Pine Association (comprising North and South Carolina and Virginia).
Danville Commercial Association.
Danville Tobacco Association.
Richmond Branch, National League of Commission Merchants.
Richmond Retail Merchants' Exchange.
Richmond Tobacco Exchange.

WASHINGTON.

Eastern Washington and Northern Idaho Lumber Manufacturers' Association.
Washington State Grange, Patrons of Husbandry.
Chewelah Commercial Club.
Colville Commercial Club.
Dayton Commercial Association.
Franklin County Chamber of Commerce, Pasco.
Grays Harbor Commercial Club, Cosmopolis.
Republic Chamber of Commerce and Mines.
Ritzville Chamber of Commerce.
Seattle Manufacturers' Association.
Spokane Chamber of Commerce.
Spokane Jobbers and Shippers' Association.
Spokane Lumbermen's Association.
Tacoma Chamber of Commerce and Board of Trade.
Tacoma Retail Grocers' Protective Association.
Walla Walla Commercial Club.

WEST VIRGINIA.

Charles Town Board of Trade.

WISCONSIN.

Wisconsin Cheese Makers' Association.
Wisconsin Grain Dealers' Association.
Wisconsin Retail Hardware Association.
Wisconsin Retail Lumber Dealers' Association.
Wisconsin State Grange, Patrons of Husbandry.
Wisconsin State Millers' Association.
La Crosse Board of Trade.
La Crosse Manufacturers and Jobbers' Union.
Marinette General Improvement Association.
Marinette County Good Roads Association.
Milwaukee Association of Steam and Hot Water Heating Engineers.
Milwaukee Branch, National League of Commission Merchants.
Milwaukee Builders and Traders' Exchange.
Milwaukee Chamber of Commerce.
Milwaukee Merchants and Manufacturers' Association.
Milwaukee Millers' Association.
Milwaukee Retail Grocers' Association.
Muscoda Dairy Board, Spring Green.
Peshtigo Good Roads Association.
Superior Retail Grocers' Protective Association.

WYOMING.

Colorado and Wyoming Lumber Dealers' Association.
Eastern Wyoming Wool Growers' Association.
Newcastle Twentieth Century Club.
Saratoga Board of Trade.

The State and local organizations enumerated in the foregoing are situated as follows:

Alabama	5	North Carolina	4
Arkansas	10	North Dakota (sectional)	0
California	29	Ohio	40
Colorado	14	Oklahoma	4
Connecticut	8	Oregon	4
District of Columbia	1	Pennsylvania	17
Florida (sectional)	0	Rhode Island	8
Georgia	5	South Carolina	10
Idaho	8	South Dakota	3
Illinois	29	Tennessee	3
Indiana	19	Texas	9
Iowa	14	Utah	3
Kansas	19	Vermont	3
Kentucky	5	Virginia	5
Louisiana	4	Washington	14
Maryland	5	West Virginia	1
Massachusetts	17	Wisconsin	19
Michigan	13	Wyoming	3
Minnesota	22		
Mississippi	4	Total	432
Missouri	21	National and sectional organizations	63
Montana	4	State granges, Patrons of Husbandry	17
Nebraska	12		
New Hampshire	1	Aggregate	512
New Jersey	3		
New Mexico	1		
New York	23		

The legislatures of the following 16 States have memorialized Congress to enact legislation of similar character, viz:

Arkansas, Colorado, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Montana, North Dakota, South Dakota, Texas, Washington, Wisconsin.

National and sectional organizations	63
State and local organizations, representing 45 States and Territories	432
Total	495
Seventeen State granges, Patrons of Husbandry, viz, California, Connecticut, Illinois, Indiana, Iowa, Kansas, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Washington, Wisconsin	17
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